



Appeal Decision

No Site visit

by **M Madge Dip TP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 15 November 2024

Appeal Ref: APP/L3625/X/23/3325900

Kingswood Manor, Stubbs Lane, Lower Kingswood, Surrey KT20 7AJ

- 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 Riken Amin of Brick KM Ltd against the decision of Reigate and Banstead Borough Council.
 - The application ref 23/00857/CLP, dated 28 April 2023, was refused by notice dated 21 June 2023.
 - 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 ancillary outbuilding (Class E GPDO) Lawful Development Certificate (Proposed). The use of the proposed building will be incidental to the main dwelling, for the enjoyment of the owners. The proposed building will include a home gym, yoga area, steam room/sauna and prayer room.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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 or judicial authority. The burden of proving relevant facts rests on the appellant and the evidential test is the balance of probability. For this reason, a site visit to the property is not necessary as it would not contribute to my decision.
3. The description of the development for which an LDC is being sought is cumbersome. Unfortunately, there is no provision within the Town and Country Planning Act 1990 (as amended) for me to amend the description. I shall hereafter refer to the development to which the LDC relates as the 'proposed outbuilding'.

Main Issue

4. The **main issue** is whether the Council's refusal to issue an LDC is well founded.
5. The appellant's main argument is that the proposed outbuilding, which is shown on drawing numbers: SP01, SP02, SP03, SP04 and SP05, would satisfy all the physical criteria set out in Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended) ('the GPDO'). The relevant part of Class E sets out permitted development rights, subject to conditions and limitations set out in paragraphs E.1, E.2, E.3 and E.4 for the following type of development:

'The provision within the curtilage of the dwellinghouse of...any building ...required for a purpose incidental to the enjoyment of the dwellinghouse as such...'

6. There is no disagreement between the appeal parties that the proposed outbuilding would satisfy the physical criteria in Class E, but that is not decisive. Of more significance is the first part of Class E (a), which is set out above.
7. The Courts have held that the word '*required*' in Class E should be interpreted to mean '*reasonably required*'. The words '*as such*' are also important. Thus, in this type of case, the appellant should show that what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse as a dwellinghouse. The onus of proof is squarely upon the applicant and the relevant test is on the balance of probability. It is therefore appropriate to examine the reasons for the development being required under Class E. Otherwise, the GPDO would be open to abuse by proposals involving buildings being constructed for one stated purpose and then being used for a different purpose.
8. When evaluating whether a building to be erected under the provision of Class E is reasonably required for the enjoyment of the dwellinghouse, matters such as personal preference are not conclusive factors. The matter does not rest solely on the unrestrained whim of the householder. An unusually large building will not necessarily be reasonably required just because a householder says it is. It is for the appellant to show that a building of a proposed size is reasonably required, and that it would be designed with incidental uses in mind, having regard to all circumstances. The proposed physical size of the outbuilding is not determinative in itself, but it is a relevant consideration.
9. The proposed outbuilding would be quite substantial in size; some 207 square metres in terms of its footprint¹. The appellant's contention is that it would be used by the residents of the main dwelling as a home gym, yoga area, steam room/sauna and prayer room. In support of the proposed outbuilding, the appellant advises the appeal property *'is home to three generations of a single family, therefore the desire for ancillary space is often a necessity to meet the requirements of modern family living.'*².
10. The plans show that the main dwelling has previously been extended, in addition to there being several substantial outbuildings within its curtilage. There is no satisfactory explanation as to why the proposed uses cannot be carried out within the host dwelling or the existing outbuildings. Furthermore, there is nothing to show why such a large additional outbuilding is genuinely and reasonably required or necessary to accommodate the proposed uses and activities. Consequently, a firm conclusion that the development is reasonably required to accommodate the proposed uses and activities cannot be reached.
11. I have been referred to several similar proposals where the Council granted LDCs for Class E buildings. While copies of the approved plans and the LDCs have been provided, these do not show what evidence was provided to show that each building was reasonably required for purposes incidental to the enjoyment of its respective dwellinghouse. These decisions do not therefore

¹ Drawing number: SP06

² Paragraph 4.3 of appellant's Grounds of Appeal Statement

contribute to the requirement that the appellant shows how their proposal is reasonably required for a purpose incidental to the enjoyment of their dwellinghouse.

12. The evidence presented fails to show the proposed outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. On the balance of probability, having regard to the available evidence, I therefore find that the development would not be lawful under Class E to the GPDO.
13. 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 construction of an outbuilding (Class E GPDO) Lawful Development Certificate (Proposed). The use of the proposed building will be incidental to the main dwelling, for the enjoyment of the owners. The proposed building will include a home gym, yoga area, steam room/sauna and prayer room'* is well-founded and that the appeal should fail.

M Madge

INSPECTOR