



Appeal Decision

Site visit made on 18 February 2025

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 March 2025

Appeal Ref: APP/Z5060/X/23/3332712

517 Whalebone Lane North, Romford RM6 5QX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mohammad Irfan against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 23/01322/CLUP, dated 22 August 2023, was refused by notice dated 13 October 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 a "Proposed outbuilding in the rear garden to form a gymnasium."
-

Decision

1. The appeal is dismissed.

Procedural Matters

2. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probability, that the development at the date of application is lawful.

Main Issue

3. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the outbuilding is granted planning permission by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

Whether incidental

4. The main dwellinghouse is an end of terrace two-storey building which has been extended with a single storey front, side and rear extension.

5. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such....'.
6. The Council determined that owing to its excessive size, in relation to the original footprint of the dwellinghouse, the single storey outbuilding falls foul of the limitations and conditions of Class E of Schedule 2, Part 1 of the GPDO. The Council also state that the application fails to demonstrate that the purpose, as a gym and shower room, is incidental to the dwellinghouse. The decision therefore turns on whether the building is for a purpose incidental to the enjoyment of the dwellinghouse.
7. It has been established by case law that an incidental use should be functionally related to the primary use (as a dwellinghouse). The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental will be a matter of fact and degree. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse and answer the question as to whether the building is genuinely and reasonably required or necessary in order to accommodate the use or activity and thus achieve that purpose.
8. The proposed plans submitted illustrate that the building would be used as a gym with an ensuite shower room. Whilst this use could be incidental, it is not clear to me that the large footprint of the outbuilding is of a size that is genuinely and reasonably required to accommodate this use. For instance, the footprint of the outbuilding is approximately 50.4sqm¹, which is similar to the original footprint of the dwelling, prior to the construction of the single storey front, side and rear extension.
9. Limited details of the precise nature, scale and facilities for the proposed activities have been supplied to assess whether the amount of space is genuinely and reasonably required to accommodate those activities. Equally, there is no information to explain why such a large building, relative to the original dwellinghouse, is required for gym equipment, and it is not enough to simply state that the outbuilding would be used for incidental purposes and label the drawings of the large outbuilding as 'gymnasium.' Furthermore, from what I observed during my site visit, this use could be accommodated in a building of far more modest proportion.
10. Therefore, it is unclear why such a large building is needed for a gym particularly in the context of this single family dwellinghouse. I do not therefore find that the outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse.
11. Therefore, the appellant has failed to discharge the burden of proof to demonstrate that the existing outbuilding benefit from permitted development rights within Class E.

Conclusion

12. The basis of the application is that the development benefits from permitted development rights under Class E of Schedule 2 Part 1 of the GPDO, but I have

¹ Measurement taken from dimensions stated in the appellant's statement of case.

found that it would not be incidental to the enjoyment of the dwellinghouse. It therefore requires planning permission.

13. I conclude that the Council's refusal to grant a certificate of lawful use or development for the outbuilding is well-founded, and that the appeal should fail. I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

R Satheesan

INSPECTOR