



Appeal Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 August 2025

Appeal Ref: Appeal Ref: APP/N5090/X/23/3331104

7 Hayward Road, London N20 0HA

- 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 Nikunj Modha against the decision of the Council of the London Borough of Barnet.
 - The application ref 22/6118/192, dated 29 December 2022, was refused by notice dated 6 April 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 outbuilding for use incidental to the enjoyment of the existing dwelling.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The appeal can be determined without the need for a site visit, as I have been able to reach a decision based on the information already available.

Application for costs

3. An application for costs was made by Mr Nikunj Modha against the Council of the London Borough of Barnet. This application is the subject of a separate Decision.

Main Issue

4. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether the appellant has shown that planning permission is granted for the proposal by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO), Article 3(1) at Schedule 2, in Part 1, Class E.

Reasons

5. The appeal property contains a two-storey, semi-detached dwelling. It is proposed to erect a freestanding single storey outbuilding towards the end of the rear garden. The outbuilding would primarily provide a home training area for Brazilian Jiu-Jitsu (BJJ), as well as a bathroom/sauna and storage space. The burden is firmly on the appellant to show that an LDC should be granted for the proposal, the relevant test of the evidence being on the balance of probability.
6. The GPDO, Article 3(1) at Schedule 2, in Part 1, Class E, paragraph E.(a), grants planning permission for the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwelling as such. This is subject to also meeting the limitations, including in relation to the size of the structure relative to the total area of the curtilage, together with those on the height and location of such a structure, set out in paragraphs E.1 to E.3. There is no dispute that the outbuilding would be

located in the curtilage of the dwelling, that the relevant limitations in paragraph E.1 would be met and that paragraphs E.2 and E.3 do not apply. I concur.

7. In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it. Established case law¹ confirms that 'required' for a purpose incidental to the enjoyment of the dwelling as such is to be interpreted as 'reasonably required' and should not rest on the unrestrained whim of a householder. The physical size of a building in comparison to the dwelling can be an important consideration, but by itself is not conclusive. Regard should be had to the use to which it is proposed to put the building and to the nature and scale of that use. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the building would be genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
8. Undertaking home-based training by occupiers of a dwelling for a sporting activity such as BJJ could reasonably be regarded as being subordinate to and connected with the domestic and leisure activities of the persons living in the dwelling and as such, incidental to its enjoyment. Storage of sports clothing and equipment used by the occupiers of a dwelling along with tools used in tending the garden and other items used for household maintenance could also be so regarded.
9. Similarly, as a matter of fact and degree, it is not unreasonable for the bathroom/sauna to be considered as part and parcel of and integral to the incidental home-based training activity. A bathroom/sauna would afford greater convenience to persons undertaking home-based training who, either during such activity, or when recovering, relaxing or freshening up afterwards, would otherwise have to walk outside for several metres to access comparable facilities in the dwelling, possibly during hours of darkness or in inclement weather conditions. Set in that context, also taking the Government's Technical Guidance² into account, the bathroom/sauna would not provide primary living accommodation. I am mindful that an Inspector found differently in respect of a shower room in an outbuilding in one of the appeal decisions supplied by the Council. However, the current appeal falls to be determined on its individual facts and circumstances.
10. No layout drawings were provided for the dwelling. Even so, having regard to its likely size and occupation by a family there is little to suggest that the internal floor space in the dwelling is not for the most part fully utilised as living accommodation by the occupiers. In the context of a family dwelling of such size and the likely limited availability of under used floor space, provision of some or all of the uses proposed within the existing structure is unlikely to be a practicable option. Consequently, I give little weight to the prospect of using space within the dwelling as an alternative to the proposal.
11. At 2m², 5.7m² and 5.5m², the floor areas of the entrance lobby to the home training area, the bathroom/sauna and the storage space respectively are not excessive in terms of their use for incidental purposes. Nevertheless, at 34m² the home training area would provide around three times more than the floor area recommended for a home BJJ space for two people-just over 3m x 3m or around 9.3m²-according to businesses that supply equipment to fit out such spaces. The size proposed would be closer to that specified by the International Brazilian Jiu Jitsu Federation for competition spaces-6m by 6m for a combat area.
12. Given the more modest dimensions of the recommended home BJJ training area set out above, it is unclear how the appellant has arrived at a space of 5m x 5m plus a metre buffer zone being the minimum required for two people. It is difficult to accept that businesses who provide sporting equipment would recommend spaces

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

² Permitted development rights for householders: Technical Guidance MHCLG 2019

which are not of suitable size for effective and safe BJJ training at home. The appellant did not amplify how medical conditions might affect the size of the home training area proposed.

13. The appellant also suggested that they, their son and respective training partners would be using the home training area simultaneously. However, it is by no means certain that this would be a frequent occurrence. Home training regimes are highly likely to vary, even between individuals who form part of the same household, on account of factors including different working and leisure patterns. It is entirely possible that the home training area would only be in use by one or two people, more often than not. As a result, use by more than two people at the same time lends limited weight to the provision of a home training area of the size proposed at the property. The additional supporting evidence referred to by the appellant was not supplied.
14. To my mind, the above all points to the size of the home training area as being excessive for the purpose of providing sufficient space to enable safe and effective BJJ training to take place at home. There is little firm evidence to show otherwise. This raises the distinct prospect that, whilst the appellant does not intend any use for competing in BJJ, the nature and scale of activities in the outbuilding would nevertheless go beyond a purpose merely incidental to the enjoyment of the dwelling as such and constitute something greater than a requirement solely related to that purpose.
15. Therefore, based on the available evidence and on the balance of probability, I find that the appellant has been unable to show that the outbuilding would be required for a purpose which is intended for and will remain subordinate to the main use of the property as a dwelling, so as to be granted planning permission by Class E. It follows that I shall not grant an LDC for the proposal.

Conclusion

16. For the reasons given above, 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 will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR