



Appeal Decision

Site visit made on 6 November 2017

by K R Seward Solicitor

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 10 November 2017

Appeal Ref: APP/M5450/X/17/3167883

Bramber, Porlock Avenue, Harrow HA2 0AP

- 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 Charish Dsouza against the decision of the Council of the London Borough of Harrow.
 - The application Ref P/4355/16, dated 12 September 2016, was refused by notice dated 17 November 2016.
 - 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 described as "construction of a single story [sic] garden office accessible from main house side entrance."
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Decision

1. The appeal is dismissed.

Procedural Matters

2. I have utilised above the description of the proposed development as it appears in the application and appeal forms, noting that the Council's decision uses a different description of "single storey outbuilding in rear garden".
3. An outbuilding has now been built in the location identified in the proposal. From details supplied by the appellant during the course of the appeal, it is evident that the outbuilding has been subject to investigation by the Council. The appellant states that the outbuilding has been constructed without a shower/toilet having agreed with the Council not to install either facility. For the purposes of this appeal, I must consider the application as things stood at the time of the application. That is the relevant date for the consideration of an application for a proposed development under section 192 of the 1990 Act rather than changes to the scheme made after the Council's decision. The application plans before me show a shower/toilet which is the basis on which the appeal proceeds.
4. If the appellant wishes to establish whether the existing development is lawful, then an application would need to be made to the Council under section 191 of the 1990 Act.
5. In an LDC appeal, the planning merits of the outbuilding are not relevant. My decision rests on the application of relevant planning law and judicial authority to the facts of the case. Therefore, arguments concerning matters such as

current non-use of the garden due to its lack of privacy and the location beside a busy bus route, cannot be taken into account.

Main Issue

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

Reasons

7. In an LDC appeal the onus of proof is on the appellant to show that, on the balance of probabilities, the development would be lawful at the time of the application.
8. The proposal is for a single storey outbuilding located in the side garden close to the extended bungalow known as 'Bramber'. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
9. There is no suggestion that the outbuilding as proposed would conflict with any of the limitations within paragraph E.1. of Class E. The Council has taken issue over the size of the outbuilding and the inclusion of a toilet. The point in issue is whether the proposed outbuilding would be required for a purpose incidental to the enjoyment of the dwelling. There is no statutory definition of the word "incidental", but case law provides authority for how this should be interpreted by decision makers.
10. The Court in *Emin v SSE*¹ held that the term 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. The test to be applied is whether, in the context of the planning unit, *"the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse."* In taking that approach, regard is to be had to the proposed use and to the nature and scale of that use. The physical size of the building in comparison to the dwellinghouse might be part of that assessment, but is not by itself conclusive.
11. This illustrates that each case will depend on the particular circumstances.
12. The Council considers the footprint of 30sqm to be excessively large albeit acknowledging that it does not know the footprint of the original dwelling.
13. The dwelling is a detached bungalow with attached garage. Alterations and additions have been made to the main roof to provide accommodation within. It occupies an irregular shaped plot near to the corner of Porlock Avenue with Merton Road. The site plan shows a large footprint for the dwelling as it now exists from which it cannot be gleaned how much is an enlargement.
14. However, the wording of Class E.(a) is "for a purpose incidental to the enjoyment of the dwellinghouse as such...". Whilst there are references to "original" dwellinghouse in the paragraphs that follow, there is nothing within

¹ *Emin v Secretary of State for the Environment and Mid-Sussex County Council*, QBD, 1989, 58 P&CR

Class E.(a) itself that requires account to be taken of the size of the original dwelling. The "dwellinghouse as such" I take to be the bungalow as it existed at the date of the LDC application.

15. The side garden is triangular in shape. One end of the outbuilding would be angled sharply to correspond with the boundary alignment. At 30sqm, the outbuilding would not be particularly large. Compared with the footprint of the existing bungalow, it is considerably smaller.
16. In principle, the overall size of the proposed outbuilding does not appear disproportionate to the bungalow. However, it is for the appellant to demonstrate that the floorspace attributed to the proposed use is genuinely and reasonably required or necessary in order to accommodate that use.
17. In the application form the proposed outbuilding is described as a single storey "garden office" whereas the plan submitted with the application is annotated as being for "a combined gym and office". The Appeal Form refers to "the garden office as either a gym or crafts area" and also as "an office or gym or an art/hobby room". Given these variances in description there is a lack of clarity over the intended use. It could be an office, gym, crafts/hobby room or a combination of these. The floor plan does not assist as it simply shows one open plan room with adjoining bathroom facilities.
18. There are no details for the office, art/crafts/hobby or the type of gym equipment that would be installed including the space that such uses would occupy. The differing descriptions suggest that flexibility in use is sought, but it is insufficient for an appellant to simply identify categories of possible use. The responsibility rests with the appellant to make the case that the building is, or would be, reasonably required for an incidental purpose.
19. The inconsistencies and lack of details mean that the intended purpose is vague. In consequence, it cannot be gauged whether or not the outbuilding would genuinely be for incidental purposes. Nor is it sufficiently clear whether a building of this size is reasonably required when the nature and scale of the proposed use is uncertain.
20. The Government's Technical Guidance² makes clear that Class E does 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.
21. A home office, gym and crafts area/art/hobby room are all uses which are not usually part of primary living accommodation. There is no dispute between the parties on this point. The Council maintains that the outbuilding would not be incidental to the enjoyment of the dwelling by reason of the presence of toilet facilities.
22. To support its stance, the Council refers to another LDC application which was dismissed on appeal³ where the proposed outbuilding was to contain a shower and toilet. That decision was made with reference to the Town and Country Planning (General Permitted Development) Order 1995 which has since been replaced with the current GPDO albeit the terms of Class E remain largely the

² "Permitted development for householders, Technical Guidance", published by the Department for Communities and Local Government in April 2017

³ Appeal Ref: APP/T5150/X/13/2193479 dated 28 June 2013

same. Nevertheless, in that case the ground floor toilet was expressed to be required for various personal reasons. It was only during the appeal that the prospect of a use as a gym was raised for the first time and without elaboration. The circumstances therefore differ.

23. A shower and toilet would normally be regarded as integral to the ordinary residential use of a dwelling. There could be circumstances where the provision of those facilities may be regarded as ancillary to another use to remain within Class E. That could potentially include a gym. On the other hand, shower and toilet facilities would not ordinarily be associated with a crafts/hobby space or an office.
24. In this case, it is not possible to establish if the inclusion of a toilet would be outside the scope of Class E because it is not sufficiently clear how the outbuilding would be used.
25. Consequently, from the information before me, the appellant has failed to discharge the burden of proof to demonstrate that the proposed building would benefit from permitted development rights within Class E.

Conclusion

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey garden office 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.

KR Seward

INSPECTOR