



WRITTEN REPRESENTATIONS: APPEAL STATEMENT

BY

Mr Alka Bhola

FOLLOWING THE REFUSAL OF AN APPLICATION FOR A CERTIFICATE OF
LAWFULNESS FOR A PROPOSED DEVELOPMENT BY

The London Borough of Hillingdon Council

REF:

51563/APP/2019/1370

FOR:

Single storey outbuilding to rear for use as a gym/games room

AT:

12 Jonson Close, Hayes, UB4 0BS

August 2019

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1.0 BACKGROUND

1.1 This appeal relates to the council's decision to refuse an application for a Certificate of Lawfulness for a Proposed Development which proposed a single storey outbuilding to rear for use as a gym/games room at no. 12 Jonson Close in Hayes.

1.2 The planning application was dated 23rd April 2019 and was subsequently refused on 7th June 2019 by the London Borough of Hillingdon Council, with the decision notice stating one reason for refusal, as noted below:

1. *The proposed development does not constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as the proposed outbuilding in conjunction with the existing outbuilding, by reason of its cumulative size and scale is not considered to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse.*

This determination is based on your submitted plans. All measurements are taken from existing ground level.

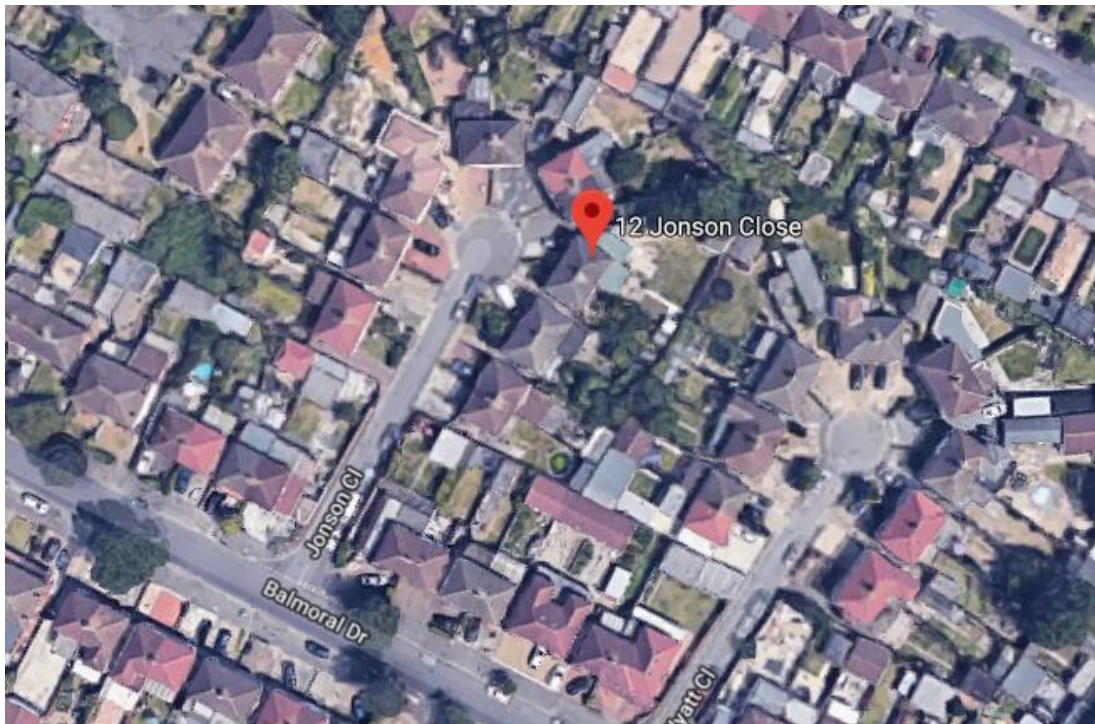
1.3 Having taken into account the reason given for refusal and the individual circumstances of the case, the appellant concluded that the most productive course of action would be to appeal to The Planning Inspectorate in confidence that a certificate would be granted.

2.0 APPEAL PROPERTY & LOCATION



No. 12 Jonson Close

- 2.1 The appeal site relates to a two storey, semi-detached dwelling house which has been previously extended with single storey side/rear extension. The front curtilage of the site provides off-road parking whilst to the rear is a large garden.
- 2.2 The appeal site is positioned to the eastern side of Jonson Close in a predominantly residential location. However, the appeal site is not within a conservation area and the appeal dwelling and neighbouring properties are not listed buildings.



Aerial view of the appeal site and surrounding location

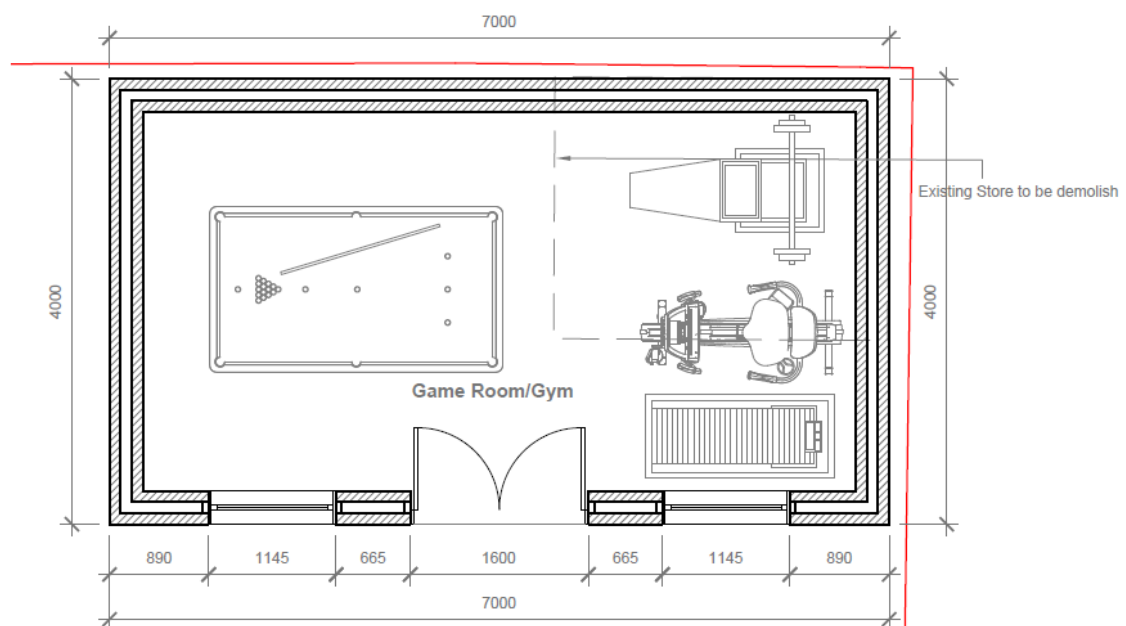
3.0 PROPOSAL

- 3.1 The scheme proposed a single storey outbuilding to rear for use as a gym/games room which would be located adjacent to the rear boundary of the site in place of a pre-existing shed which has already been removed.
- 3.2 The outbuilding would measure 7m wide x 4m deep producing an overall external footprint of 28m². The development would not exceed a maximum flat roof height of 2.5m and would be constructed from materials which complement the host property.



Proposed elevations

- 3.3 The proposed outbuilding would be utilised as a gym/games room which would contain a pool table and three items of gym equipment.



Plan excerpts taken from drawing no. 2019/044-01

4.0 GROUNDS OF APPEAL

4.1 To recap, criterion E.1 states that development is not permitted by Class E if –

- (a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use);
- (b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);
- (c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;
- (d) the building would have more than a single storey;
- (e) the height of the building, enclosure or container would exceed—
 - (i) 4 metres in the case of a building with a dual-pitched roof,
 - (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
 - (iii) 3 metres in any other case;
- (f) the height of the eaves of the building would exceed 2.5 metres;
- (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building;
- (h) it would include the construction or provision of a verandah, balcony or raised platform;
- (i) it relates to a dwelling or a microwave antenna; or
- (j) the capacity of the container would exceed 3,500 litres.

4.2 The planning officer's report confirms that the site is not within a Conservation Area, World Heritage Site or AONB, and benefits from permitted development rights and that this type of proposal is not restricted by any Article 4 Direction. Furthermore, it confirms that the development does in fact comply with the limitations set out in Class E.

4.3 Although the council have acknowledged that the development complies with the parameters of permitted development they have made the following statement:

“Class E.4 of the GPDO stipulates that the provision within the curtilage of the dwellinghouse of any building is required for a purpose incidental to the enjoyment of the main dwellinghouse. As such the onus of proof is firmly on the applicant to demonstrate that the proposed outbuilding would be for such a purpose.”

- 4.4 Consequently, the test is whether or not the proposed building is required for purposes incidental to the enjoyment of the dwelling house and whether the proposed outbuilding is reasonably required in order to accommodate those uses and whilst size is a factor to be taken into account, in accordance with Emin, it is not determinative. As the onus of proof is firmly on the appellant in this regard the following paragraphs will seek to demonstrate that the purposes for which the building is required and the reasons why a certificate should be issued.
- 4.5 Whilst it is recognised that the test must retain an element of objective reasonableness and should not be based on the unrestricted demands of an occupier, although as equally important a test should not be imposed to frustrate the reasonable aspirations of a particular owner/occupier as long as the proposed use is sensibly related to the enjoyment of the dwelling.
- 4.6 By way of background, the site originally contained two outbuildings which comprised a rendered outbuilding which would be retained and a smaller aluminium shed which has since been removed from the site to make way for the proposed new outbuilding.



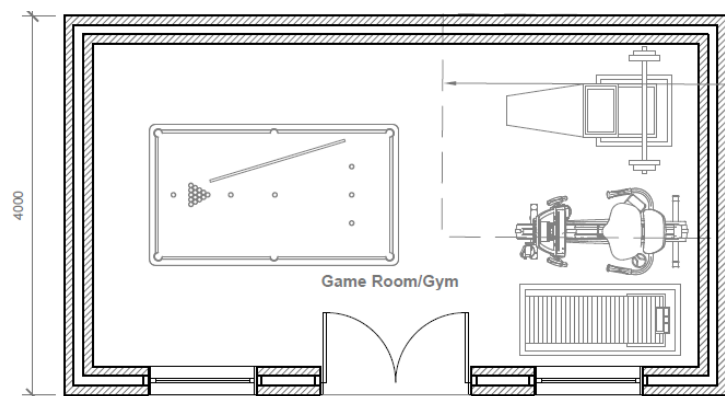
Pre-existing outbuilding

- 4.7 To confirm the remaining outbuilding measures approximately 6.3m wide x 3.3m deep producing a footprint of approximately 21m². This existing structure is used as a storage shed and accommodates typical gardening and DIY equipment, the family's bicycles and garden furniture as well as other general household paraphernalia that cannot be accommodated in the host property.



Existing outbuilding

- 4.8 Given the modest size of the existing outbuilding this structure does not have sufficient room to also accommodate the pool table and gym equipment that the family require. As a result, the appeal scheme proposes a further modest outbuilding measuring just 7m wide by 4m deep producing an overall footprint of only 28m².
- 4.9 The appellant has clearly defined the proposed use of the outbuilding as shown in the submitted plans which illustrates the space accommodating a pool table and three pieces of gym equipment contained in a floor area of approximately 22m².



Proposed layout

- 4.10 A gymnasium with pool table for entertainment do not usually form part of primary living accommodation and the existing property is certainly not capable of housing such equipment and therefore, it is stated that these uses are entirely incidental to the enjoyment of a dwelling house and the provision of an outbuilding of the size proposed to accommodate these incidental facilities would not be unreasonable.
- 4.11 The council's statement that the appellant has not explained why a second outbuilding of the size proposed is required is unjustified given the layout information supplied on the plans which clearly indicate its proposed use.
- 4.12 Whilst the council acknowledge that the proposed outbuilding would normally be considered to be of a size and scale commensurate to the host dwelling their argument relates to the fact that the site has an existing detached outbuilding of a similar size. Therefore, they state that as the cumulative footprint of the detached outbuildings is approximately 50m² this would equate to 10m² more than the original dwelling and, as such, the proposal would not be commensurate to the size and scale of an outbuilding incidental to the enjoyment of the main house.
- 4.13 However, as appeal case history has demonstrated any comparison should be with the existing dwelling as extended since the proposed structure would be associated with that and not the original dwelling. Consequently, the extended footprint of the property is approximately 82m² and therefore, the cumulative footprint of the detached outbuildings would be significantly smaller at approximately 50m² and would thus be minor accompaniments to the host dwelling.



Existing extended property



Proposed outbuilding would be placed on existing hardstanding

- 4.14 The only direct constraint on the size of a new outbuilding is imposed through the limitation at paragraph E.1 (b) of Class E, which the council confirmed would not be breached given the site's area of approximately 420m² and the limited built footprint on the site. Therefore, the use of the proposed outbuilding as a gym/games room would fall within the range of incidental purposes that are permitted and would be connected primarily with the leisure interest of the residents of the host property.
- 4.15 In summary, the size of the outbuilding is dictated by its proposed uses and therefore, the gym/games room would accommodate three gym machines with the addition of a pool table for entertainment purposes which all require sufficient circulation space to ensure the safety of users. Thus, it is emphasised that the scale and use of the outbuilding is entirely acceptable even when taking the existing outbuilding into account and therefore, would still remain incidental to the main use of the building as a dwelling house.
- 4.16 The appellant would like to bring the inspector's attention to appeal reference APP/R5510/X/18/3213915 (details attached in **Appendix A**) at no. 41 Park Lane in Hayes. This appeal was allowed and a certified issued for a "single storey garage to rear" on 26th June 2019.

- 4.17 The appeal example at no. 41 Park Lane is considered relevant as it proposed a 6.4m wide x 12.192m long outbuilding which produced a footprint of 78m² although the original dwelling had a footprint of only 39.41m².
- 4.18 In this case the Inspector found that any comparison of sizes should be with the existing dwelling as extended and not the original dwelling. Furthermore, the Inspector found that the use of the garage for storing a collection of classic cars was acceptable and not *“driven by the unrestrained whim of the appellant”*.
- 4.19 Given case evidence the appellant reiterates that the proposed additional outbuilding would be permitted development, being a building that is required for a purpose incidental to the enjoyment of the dwelling house.

5.0 CONCLUSIONS

- 5.1 The council assert that the proposed outbuilding does not constitute permitted development by virtue of its scale and size because they consider it would not be a minor accompaniment to the host dwelling due to an existing smaller outbuilding at the site. However, the appellant strongly disputes this decision as the only direct constraint on the size of a new outbuilding is imposed by the limitation at paragraph E.1 (b) of Class E, which the council confirmed would not be breached given the site's area of approximately 420m² and the existing built footprint on the site.
- 5.2 The intended use of the outbuilding has been clearly explained and given that it is for the appellant to determine what purposes are incidental to the enjoyment of the dwelling house he proposes to enjoy, he must be able to determine the size of the outbuilding in which these purposes will be enjoyed, subject to the overriding test of reasonableness. The proposed outbuilding is not excessive in area, indeed, it should be considered to be of a reasonable size for the intended purposes.
- 5.3 Therefore, it is concluded that the building is required for purposes incidental to the enjoyment of the dwelling house, with the council not disputing that all elements of Class E are satisfied including the limitations.
- 5.4 For the reasons given above and the evidence provided, on the grounds that the council's refusal to grant a Certificate of Lawfulness of Proposed Development in respect of the construction of an outbuilding at the rear of the garden was not well founded it is politely requested that the appeal should be allowed.