
Appeal Decision

Site visit made on 21 September 2021

by Roy Curnow MA BSc(Hons) MRTPI

An Inspector appointed by the Secretary of State

Decision date: 01 October 2021

Appeal Ref: APP/R5510/X/21/3261981

54 Dale Drive, Hayes UB4 8AU

- 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 Khalil Ullah against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 5861/APP/2020/1338, dated 13 April 2020, was refused by notice dated 28 May 2020.
 - 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 Enlarging existing outbuilding.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have taken the details for the header above from the Lawful Development Certificate (LDC) application form. The Council's decision notice describes the proposed development as follows: 'Single storey extension to existing outbuilding (Application for a Certificate of Lawful Development for a Proposed Development)'. Under section 192 of the Town and Country Planning Act 1990 as amended, there is no power to alter the terms of an LDC application, but it may be modified by agreement. As I have been given no evidence to show that the alteration was agreed, I will evaluate the proposal on the basis of the description in the application form.

Reasons

3. The main issue is whether the Council's decision to refuse the LDC was well-founded.
4. The Council's reason for refusing to issue the LDC is that the proposed outbuilding would fail to satisfy the terms of Article 3, Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, which I refer to as 'the GPDO'. In this appeal, 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 or enclosure... required for a purpose incidental to the enjoyment of the dwellinghouse as such...'

5. 54 Dale Drive is a terraced dwellinghouse with a fairly long rear garden. Towards the end of this garden there is a detached, flat-roofed outbuilding, beyond which is a small yard area. The building is described¹ as a 'Play Room'. The certificate is sought for works to enlarge this outbuilding by removing its rear wall and extending it rearwards onto the yard.
6. When I visited the site, a timber building with a clear plastic roof of dimensions similar to that which forms the subject of this appeal had been erected on the land to the rear of the Play Room. It was largely empty when I visited.
7. The only description for the enlarged building on the drawings is, again, 'Play Room'. However, I am aware of the Appellant's description of the development on his appeal form of 'Store Room and Play Area' and his statement on that form which relates to the need for storage space.
8. Essentially, the appellant's case at the application stage focussed on the building's dimensions and coverage of the curtilage at No 54. The Council did not contend that this case was flawed, and I find no reason to disagree. The Council's position was that, by reason of its overall size and scale, the outbuilding is not considered to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse.
9. 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 appellant and the relevant legal test is on the balance of probability. It is therefore appropriate to examine the reasons for 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 another purpose.
10. In his statement, in respect of the Council's reason for refusing to issue a certificate, the Appellant provides reasoning as to why the enlarged outbuilding is required. These are that he needs more storage space and that the outbuilding would be for the use of he and his family alone. In addition, he acknowledges that the extended building would be larger than others in the vicinity but that it would be on his land and would utilise 'dead space'. Overall, he says, the resultant outbuilding would comply with permitted development rights.
11. The outbuilding would be quite substantial in size. The Council in its delegated report states that its floor area would be 60sqm and that this would represent 150% of the footprint of the original dwelling, which it says was 40 sqm. The dwellinghouse has been considerably extended in the past. I note that the Appellant has not countered the points made by the Council, and I take them to be the case.

¹ Existing Site Plan

12. As I have said, it is for the Appellant to prove why the size of outbuilding is reasonably required and, in this regard, he does not provide sufficient explanation. Whilst he states that more storage is required, he has not provided evidence of the current storage provision at the property nor why additional space is required to justify the provision of such a large outbuilding. On the balance of probability and the available evidence, I find that the outbuilding would not be lawful under Class E of the GPDO.
13. For all of the above reasons and having considered all other matters, I conclude that the Council's decision to refuse the LDC was well-founded. The appeal should fail.

Roy Curnow

Inspector