
Appeal Decision

by **Gareth Symons BSc(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 1 February 2022

Appeal Ref: APP/R5510/X/21/3280182

3 Copse Wood Way, Northwood, HA6 2TP

- 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 Harrison Reeves against the decision of London Borough of Hillingdon.
 - The application ref: 22134/APP/2021/1790, dated 4 May 2021, was refused by notice dated 28 June 2021.
 - 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 detached outbuilding.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal is based on legal facts and evidence, not matters of planning merit. The parties have also submitted sufficient evidence to reach a decision on the appeal. In these circumstances it was not necessary to visit the appeal site.

Main Issues

3. The application seeks a certificate of lawful development for the erection of a single storey outbuilding in the rear garden for use as a gym/store. There were two reasons given for refusal of the LDC application by the Council. Based on those, the main issues are:
 - Whether the building would exceed the height limitation under Schedule 2, Part 1, Class E.1(e)(ii) of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO); and, if not
 - Whether the building would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.
4. For development to be granted planning permission by the GPDO, it must meet all the conditions and limitations of the relevant class. If the height limitation in this case would be exceeded, the proposal would not be development that has planning permission by virtue of the GPDO. On that basis, a finding on whether the building would be for a purpose incidental to the enjoyment of the dwellinghouse would make no difference to the appeal outcome. I would, therefore, not need to consider the second main issue.
5. The outcome of the appeal is a legal determination and the burden to make out the case rests with the appellant.

Reasons

6. There is no dispute, as shown clearly on the submitted layout plan, that the proposed building would come within 2m of the boundary of the curtilage to the dwellinghouse. The height of the building therefore cannot exceed 2.5m. Article 2(2) of the GPDO states that *"Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it"*.
7. Based on the above, taking the highest part of the surface of the ground adjacent to the building, the height of the flat roof would be 2.5m. However, the Government's 'Permitted development rights for householders - Technical Guidance 2019' sets out that if any part of the building is within 2m of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5 metres if it is to be permitted development. In this case, due to a slope of the land the height of the building would be greater for some parts than 2.5m.
8. The appellant has drawn my attention to the judgement of *McGaw v the Welsh Ministers & the Council for the City and County of Swansea* [2020] EWHC 2588 (Admin) which I have read carefully. However, the appellant has not supplied any levels of the land in the curtilage of the adjoining house for me to consider how they might affect the height assessment. Taking the ground level at its highest point based on the submitted evidence would still mean that the total development would exceed the height restriction. Moreover, the proposed building in the case of McGaw abutted the boundary wall and the consideration was about whether, because of this, the land beyond the appeal site curtilage could be considered as ground immediately adjacent to the building. In this case, the appeal building would be away from the curtilage boundaries by 1m thus meaning that there is ground within the curtilage immediately adjacent to the building from which the height of the building may be measured. Therefore, the facts of the case in McGaw were different meaning that the judgement is distinguishable from the circumstances of this appeal anyway.
9. The total building would exceed the height limitation under Class E.1(e)(ii) of the GPDO. Therefore, it is development that does not have planning permission by virtue of the GPDO. As such, carrying out the development in the absence of planning permission would be unlawful.

Conclusion

10. 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 detached outbuilding 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.

Gareth Symons

INSPECTOR