
Appeal Decision

Site visit made on 11 April 2022

by Elizabeth Pleasant BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 May 2022

Appeal Ref: APP/R5510/X/21/3269017

17 Woodgate Crescent, Northwood HA6 3RB

- 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 & Mrs M Shah against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 42270/APP/2020/4042, dated 5 December 2020, was refused by a notice dated 5 February 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 described as 'proposed construction of a single storey outbuilding within the curtilage of the dwelling house, following the demolition of two existing outbuilding. The proposed outbuilding will be constructed in the same vicinity and on the same level as the demolished gym toom outbuilding.'
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Decision

1. The appeal is dismissed.

Procedural Matter

2. I have dealt with other appeals on this site (APP/R5510/X/21/3269020, APP/R5510/C/21/3269467 & APP/R5510/C/21/3269468). Those appeals are the subject of separate decisions.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990, as amended (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The planning merits of the proposed development are not relevant in this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

Reasons

4. The proposed development would see the demolition of existing outbuildings at the appeal premises and the construction of a single storey detached outbuilding for use as a swimming pool. The provision within the curtilage of a

dwellinghouse of any building or enclosure, swimming or other pool required for purposes incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure is permitted by Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO), subject to the limitations set out in E.1, E.2 and E.3.

5. Within their first reason for refusal, the Council contend that the proposed outbuilding does not benefit from the aforementioned rights. They consider there to be an extant enforcement notice relating to the property and on that basis state that permitted development rights have been removed by virtue of s181 of the 1990 Act.
6. However, s181 does not remove permitted development rights, it ensures only that the requirements of an enforcement notice have an enduring effect. Once the terms of an enforcement notice have been complied with, then the property would benefit from rights under Class E, Part 1, Schedule 2, Article 3 of the GPDO. Moreover, Section 175 (4) of the 1990 Act states that where an appeal is brought under section 174, the enforcement notice shall [subject to any order under s.289(4A)] be of no effect pending the final determination or the withdrawal of the appeal. The enforcement notice issued by the Council on 26 August 2020 in relation to the unauthorised outbuildings on the appeal site is the subject of outstanding appeals dated 2 October 2020.¹ Consequently, there was no enforcement notice in effect when the Council made their decision on the application the subject of this appeal.
7. The Council's second reason for refusal concerns the proposed use of the outbuilding. For reasons relating to its overall size and scale, the Council do not consider that it would be for a development required for a purpose incidental to the enjoyment of the dwellinghouse. In addition, there is also concern expressed by neighbouring and local residents that the proposal does not comply with the limitations set out in E.1 of the GPDO. Although the Council does not raise such a concern, it is evidence before me, and the main parties have had an opportunity to comment on it. It is therefore a consideration for my decision in this appeal.
8. As set out above, the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for purposes incidental to the enjoyment of the dwellinghouse as such, is permitted by Class E, Part 1, Schedule 2, Article 3 of the GPDO subject to limitations set out in E.1, E.2 and E.3.
9. E.4 of the GPDO says that for the purposes of Class E, Part 1 "purpose incidental to the enjoyment of the dwellinghouse as such", include the keeping of poultry, bees, pet animals, birds and other livestock for the personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance² advises that the rules also allow, subject to the conditions and limitations, a large range of other buildings such as garden sheds, other storage buildings, garages, and garden decking, as long as they can properly be described as having a purpose incidental to the enjoyment of the house. It states that a purpose incidental to the house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an

¹ APP/R5510/C/20/3260467 & APP/R5510/C/20/3260467

²² Permitted development rights for householder: technical guidance, updated September 2019.

outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

10. It is established case law that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. 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 proposed building is genuinely and reasonably required to accommodate the proposed use. The use of the building should be subordinate to the use of the house as a dwellinghouse.
11. The building by the very nature of its proposed use must occupy a sizeable area. However, taking into account the size of the existing dwellinghouse, which is a substantial two-storey property with attic, and its generous garden area, the proposed pool building would be clearly subordinate in size, scale and appearance to the host property. Furthermore, I consider the swimming pool with associated plant room, changing room/WC/shower and a small steam room, all of which are relatively modest in size, to be likely what is needed to fulfil their purpose for family use and incidental to the use of the dwelling.
12. However, whilst the Council did not refuse the application because of any breach of the limitations under E.1 of the GPDO, there remains significant ambiguity in relation to where the boundary of the appeal site lies. I have had regard to all the evidence before me, including the findings of the various reports undertaken in relation to the boundary dispute and observations on my site visit. Furthermore, I understand that the matter is now for consideration by the courts. On that basis, I do not consider that there is sufficient clarity in the application before me that would enable me to conclude, as a matter of fact and degree, that the outbuilding would not lie within 2m of the boundary of the curtilage of the dwellinghouse. Consequently, given that the proposed height of the building exceeds 2.5m, it would not comply with limitations E.1 (e)(ii) of the GPDO.

Conclusion

13. For the reasons given above, whilst I have found that the development applied for is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such, I have found that, as a matter of fact and degree, it would not be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E of the GPDO.
14. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed outbuilding for use as a swimming pool 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.

Elizabeth Pleasant

INSPECTOR