The Planning Inspectorate

Appeal Decision

Site visit made on 7 April 2015

by Brian Cook BA (Hons) DipTP MRTPI

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

Decision date: 21 April 2015

Appeal Ref: APP/R5510/X/14/2219130
35 Monmouth Road, Hayes, Middlesex UB3 4JH

- 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 H S Cheema against the decision of the Council of the London Borough of Hillingdon.
- The application Ref 67254/APP/2104/916, dated 14 March 2014, was refused by notice dated 15 April 2014.
- The application was made under section 191(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 construction of a single storey detached outbuilding providing children's play area, home office/hobby area, domestic gym and exercise area, spiritual/meditation/prayer area and domestic storage area.

Decision

1. The appeal is dismissed.

Main Issue

2. In dealing with this matter both parties have considered whether or not the proposed development would have been permitted development by virtue of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order, 1995 (as amended) (GPDO) at 14 March 2014 when the application was made. However, for the reasons I set out below, I do not believe that to be the correct basis on which to determine this appeal. Having regard to s191(2)(a) of the Act, I consider the main issue to be whether or not the Council could on 14 March 2014 have taken enforcement action against the development that has taken place. My determination turns on the facts and law as it then applied; the planning merits do not fall to be considered.

Reasons

3. The appeal property is a semi-detached two-storey dwelling in a residential area. The appeal relates to a curtilage building at the end of the rear garden. It occupies the whole width of the plot. There is no dispute between the parties that the dimensions and other tolerances set out in Schedule 2, Part 1, Class E, E.1, E.2 and E.3 are met or not breached by the building that has been constructed. The only issue between the parties is whether or not the building was required for a purpose incidental to the enjoyment of the dwellinghouse as

such when it was built. From my inspection of the site and review of the evidence submitted I agree that this is the sole question for any determination of that matter.

4. The Council's evidence comprises the report of the Head of Planning, Sport and Green Spaces. The bulk of section 2 of the report (Appraisal of the Evidence Submitted) consists of extracts from two appeal decisions. However, these are not provided in full so the context for the extracts cannot be appreciated. Read fairly, it appears that the Council's reason for refusing the application is because it considers that a building that is almost twice the footprint of the original dwelling cannot be reasonably required for a purpose incidental to the enjoyment of that dwelling. The basis for the decision is therefore the size of the building that has been constructed in relation to the host dwelling.

5. As the appellant points out, the court has held[1] that such an approach is wrong in law. However, my remit is to consider on the evidence whether or not the Council's refusal was well founded, not whether its reasoning was correct.

6. An application under s191 is made to ascertain whether at the date of the application any existing use of buildings or operations that have been carried out are lawful (my emphasis). By the date of the application the appellant's own evidence is that the building was not used as set out in the summary details above.

7. The appellant's evidence is that the building was constructed between October 2011 and May 2012. It was constructed with a single internal space. Plans submitted for building regulations purposes show the space nominally but not physically divided into areas providing for home office/hobby; children's play/games/hobby; spiritual/meditation/prayer; domestic gym/exercise; and domestic storage. Those are the uses set out in the summary details above. While each of these uses has been held to be 'incidental' it seems to me that it would be a challenge for them to coexist within the same space, particularly the area set aside for spiritual, meditation and prayer purposes which is shown in the centre of the room.

8. However, due to changes in the personal requirements and circumstances of the appellant, in November 2013 internal structural alterations were carried out and the invoice for these works is provided in evidence. In summary, thin plasterboard partitions were installed to provide four rooms and a shower/toilet together with an open plan area. The evidence is that one room was to be used as an office/study and one as a separate home gym and exercise area. The shower/toilet was installed to be used in association with the home gym.

9. In essence this is the configuration that I saw during my site inspection. The other two rooms were used for storage and for spiritual, meditation and prayer purposes. A double sink and some basic kitchen-type units had also been installed under a window in the open plan area. I am not clear from the evidence whether or not these are the sink (single) and cupboards said to be used in association with the appellant's art and painting hobby. I also noted that the floor covering over that part of the open plan area was either tiles or a similar covering while the remainder was covered by carpet. In my view the floor covering was similar to that which would be used in a kitchen/dining/living

[1] *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

area. The internal appearance and layout of the building was that of a flat or small dwelling in my view.

10. Finally, I was met by the appellant's nephew as neither his uncle nor his aunt was available. No access was possible to the house but this was not necessary since independent access to the appeal building was available via a side gate and the rear garden.

11. Taking all this evidence into account, I conclude that, on the balance of probabilities, the sequence of events is that the building was erected to meet the requirements set out in Schedule 2, Part 1, Class E, E.1, E.2 and E.3. The uses for which it was said to be provided were generally those that have been held to be 'incidental'. Structural alterations were then carried out. These divided the space into a number of separate rooms and added a shower/toilet. As a matter of fact and degree judgement I consider this to have changed the use of the building to one providing primary residential purposes. Those works were carried out in November 2013 and represented a change of use at that date.

12. To some extent, the appellant has anticipated that conclusion being drawn. As he points out in a single paragraph of the appeal statement, that is not development by virtue of s55(2)(d) of the Act. Case law[2] is also cited.

13. However, in *Rambridge* it was held that a building could not be erected for a purpose incidental to the enjoyment of the dwellinghouse as such if the true intention was to provide primary residential use relying on s55(2)(d) of the Act to achieve that purpose. The court held that would be a sham. Although the period before the change was made was only a day in that case, the principle holds, in my view, whatever the gap in time.

14. At the heart of this appeal therefore is the true purpose for which the building was erected. In my judgement the evidence on this is inconclusive.

15. The application at appeal appears to have been prompted by a visit on 8 January 2014 by the Council's enforcement officer which appears to have been followed up by a letter from the Council dated 13 January 2014. This letter has not been provided and the Council makes no reference to any of this. The evidence therefore comes from the appellant.

16. It seems that the Council had concerns that two separate and self contained residential units could have been created by that date; the original dwellinghouse and the appeal building. In the application statement the appellant refutes that and provides two 'to whom it may concern' letters from neighbours in support of that assertion. Both letters suggest that the appellant and his family spend some periods of time abroad. However, a representation to the Planning Inspectorate following the Council's notification of the appeal states that 'the building was used as a dwelling last year (that would have been 2013) and only vacated when the Council were going to pay a visit'. The appellant has not commented upon that letter.

17. At the date of the application Circular 10/97 *Enforcing Planning Control: Legislative Provisions and Procedural Requirements* was current. Paragraph 8.15 stated that the burden of proof is on the appellant with the relevant test

[2] *Rambridge v Secretary of State for the Environment and another* [1996] EWHC Admin 262

being 'on the balance of probabilities'. Although cancelled by the Planning Practice Guidance, the essence of this advice is repeated.

18. I do not consider that, on the balance of probabilities, it would be correct for me to conclude that the building was provided for a purpose incidental to the enjoyment of the dwellinghouse as such rather than for primary residential purposes. In particular I see nothing in the personal requirements and circumstances offered by way of explanation for the creation of separate rooms that differs from those pertaining when the building was originally constructed. It follows therefore that the original building would not have been permitted by Schedule 2, Part 1, Class E of the GPDO and the change of use carried out in November 2013 would not have fallen within s55(2)(d) of the Act. At the date that the application was made the Council could therefore have taken enforcement action against a breach of planning control.

19. I have taken into account the various appeal decisions and case law referred to me by the appellant. However, each turns on its own facts and I have determined this appeal on the evidence before me.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of construction of a single storey detached outbuilding providing children's play area, home office/hobby area, domestic gym and exercise area, spiritual/meditation/prayer area and storage area 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.

Brian Cook

Inspector