The Planning Inspectorate

Appeal Decision

Site visit made on 25 November 2010

by Sara Morgan LLB (Hons) MA Solicitor

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

Decision date: 14 December 2010

Appeal Ref: APP/Q5300/X/10/2125856
61 Fountains Crescent London N14 6BD

- 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 C Millar against the decision of the Council of the London Borough of Enfield.
- The application Ref LDC/09/0447, dated 26 November 2009, was refused by notice dated 15 February 2010.
- 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 construction of a single storey building maximum 2.50 m high.

Decision

1. I allow the appeal, and I attach to this decision a certificate of lawful use or development describing the proposed operation which I consider to be lawful.

Preliminary

2. When I attended the appeal site at the time appointed for the site visit, no one from the Council was present. I contacted the Council by telephone, and they indicated that they would have no objection if I carried out the site visit in the presence of the appellant only. This I did, and I make my decision on that basis.

Reasons

3. The application drawings show a single storey flat roofed building with a maximum height of 2.5 m. It would be sited very close to the rear wall of the existing dwelling, but the submitted drawing is annotated "wall will not be attached to rear elevation". The plan does not appear to show the wall of the proposed development being attached to the existing dwelling, and the appeal statement says that the position of the building is set away from the rear elevation by approximately 25 mm.

4. The description of the proposed development in the heading is as set out in the application form. The Council in its decision notice describes the proposed development as "erection of single storey side/rear extension". If the building were to be properly regarded as an "extension" falling under Class A of Schedule 2 Part 1 of the GPDO[1] ("the enlargement, improvement or other

[1] Town and Country Planning (General Permitted Development) Order 1995 as amended

alteration of a dwelling house") rather than a curtilage building falling under Class E, then it would not be permitted development because its rearward projection would exceed the limitations in Class A.1. The appellant, however, argues that it should properly be regarded as a curtilage building under Class E, in which case the proposed development would not infringe any of the limitations in Class E.1.

5. The relevant part of Class E permits the provision within the curtilage of the dwelling house of "*any building or enclosure... required for a purpose incidental to the enjoyment of the dwelling house as such...*". Class E.1(h) excludes from permitted development rights under Class E any development which "*relates to a dwelling*", for example extensions to a house which are covered by other classes of the rules on permitted development.

6. Before October 2008, any curtilage building of more than 10 cubic metres constructed within 5 metres of an existing dwelling would have been treated as an enlargement of the dwellinghouse and so considered under Class A. That limitation was explicitly removed from the GPDO amendments which came into force in October 2008.

7. The submitted drawing of the proposed building clearly and unambiguously shows that no part of the new building would contact the existing building and it would be completely detached from the main dwelling. The Council argues that the proposal requires steps down within the kitchen of the dwelling to provide access to the new structure, and that this demonstrates the integral and functional link between the proposed structure and the dwelling. However, although the drawings show alterations to the existing ground floor of the dwelling to provide these steps, and a new door which would lead directly into a door into the proposed structure, those alterations are not essential for the proposed structure because it would have its own separate entrance leading onto, together with windows looking out over, the rear garden.

8. There is no justification for the Council's argument that a key characteristic of an outbuilding is the need for someone moving from the dwelling to an outbuilding to go outside and be exposed to the elements. In my view, the key characteristic of a curtilage building under Class E is that it should not be attached to the main dwelling. This building would not be attached to the dwelling, and the fact that a door from the dwelling would lead directly into a door into the building does not turn a detached building into an enlargement of the dwelling. The Council also argues that eaves could be constructed eliminating the 25 mm gap. But even if that happened (and the proposal before me does not show any such eaves) the result would be that the two buildings might be touching, but would not be attached to each other.

9. It is also argued that the proposal would be contrary to the intentions of the amended GPDO. However, that is belied by the explicit removal in October 2008 of the limitation relating to curtilage buildings of more than 10 cubic metres. Had it been intended that some curtilage buildings should not be permitted because of their proximity to the dwelling, then it would be reasonable to expect that to be stated explicitly in the GPDO amendments. To adopt the approach argued by the Council would be to leave open the question, exactly how far from the dwelling the curtilage building should be in order to be permitted development, and would remove a significant element of certainty and clarity from Class E.

10. Under these circumstances, I consider that despite its proximity to the dwellinghouse the building would be a separate structure within the curtilage and not an enlargement of the dwelling. It therefore falls to be considered under Class E because it involves *"the provision within the curtilage of the dwellinghouse of... any building..."*

11. The development is described on the submitted drawings as a "Games Room". The Council has not argued that a "games room" could not be a building "*required for a purpose incidental to the enjoyment of the dwelling house as such..."*, but questions the functionality of the room because of its limited width. It is pointed out on behalf of the appellant that games rooms have numerous functions for children and adults and are not limited to table tennis or pool tables. The Council has also questioned whether the building would genuinely be used for purposes incidental to the dwelling, but the proposed building is not excessively sized by comparison with the existing dwelling, which itself is a reasonable size, and there is nothing else in the application to suggest that there is any doubt about the genuineness of the appellant's intentions to use the building as a games room.

12. Provided, therefore, at the time the development commences, the building is genuinely required for a purpose incidental to the enjoyment of the dwelling house as such, and that use is genuinely instituted and not a sham, then the proposal would meet the provisions of Class E. On balance, I consider that the appellant has satisfied the burden on him to demonstrate that the use of the building would be incidental. On the other hand, of course, if at the date when construction of the building is commenced the building is not required for such a purpose, then any LDC granted in respect of this appeal would not make such a building lawful[2].

13. I conclude, therefore, having regard to all matters raised, that the proposed building would be permitted development under Class E of the Schedule to the GPDO. Consequently the Council's refusal to grant an LDC was not well founded, and I shall allow the appeal and grant an LDC accordingly.

Sara Morgan

INSPECTOR

[2] See s192(4) of the 1990 Act

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (GENERAL DEVELOPMENT PROCEDURE)
ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 26 November 2009 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of the building would be permitted development under Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Development) Order 1995 as amended in that it is a building within the curtilage of the dwelling house which is required for a purpose incidental to the enjoyment of the dwelling house as such and would not be excluded by the provisions of Class E.1 to E.3.

Signed

Sara Morgan

INSPECTOR

Date 14.12.2010
Reference: APP/Q5300/X/10/2125856

First Schedule

The construction of a single storey building maximum 2.50 m high.

Second Schedule

Land at 61 Fountains Crescent London N14 6BD

NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful,

on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

3. This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

4. The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 14.12.2010

by Sara Morgan LLB (Hons) MA Solicitor

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Scale: DO NOT SCALE