The Planning Inspectorate

Appeal Decisions

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 17 June 2016

Appeal A: APP/R5510/X/16/3143072
59 Reservoir Road, Ruislip, HA4 7TT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr R Mahmud against the decision of the Council of the London Borough of Hillingdon to refuse to grant a certificate of lawful use or development (LDC).
- The application Ref. 50293/APP/2015/3580, dated 25 September 2015, was refused by notice dated 17 November 2015.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a LDC is sought is two outbuildings for use as a store and a playroom.

Summary of Decision: The appeal is allowed and a LDC is issued, in the terms set out below in the Formal Decision.

Appeal B: APP/R5510/X/16/3143074
59 Reservoir Road, Ruislip, HA4 7TT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 by Mr R Mahmud against the decision of the Council of the London Borough of Hillingdon to refuse to grant a certificate of lawful use or development (LDC).
- The application Ref. 50293/APP/2015/3579, dated 24 September 2015, was refused by notice dated 11 November 2015.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a LDC is sought is two single storey side extensions and a single storey rear extension.

Summary of Decision: The appeal is dismissed.

Procedural matter

1. An accompanied site visit was arranged for 11.30 on 1 June 2016. The Council's representative did not attend and so the visit was aborted. As both appeals turn on matters of law rather than merits and relate to proposed developments I consider decisions can be reached without the need for a site visit. The parties have indicated in writing that they are agreeable to this approach.

Appeal A

Reasons

2. The appeal needs to be considered in the context of the terms of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted

Development) (England) Order (GPDO) 2015 which came into force on 15 April 2015. It is evident from the Council's reason for refusing the LDC and the associated officer's delegated report that there is no issue that the outbuildings in question would not meet all the conditions set out in paragraph E.1 of Class E. I have no reason to question this. The Council's decision to refuse the application is founded on the claim that the buildings are not required for purposes incidental to the enjoyment of the dwellinghouse as such, which is the wording contained within sub-paragraph (a) of Class E. The appellant disputes this arguing that the buildings satisfy this test being genuinely required for purposes incidental to the enjoyment of the appeal property.

3. The agent explains that the dwelling is occupied by a large extended family and that the outbuildings are required as a children's playroom and as a domestic store for garden tools and household items. I consider that use for such purposes falls within the remit of purposes incidental to the enjoyment of the dwellinghouse. The plans that accompanied the application show buildings measuring 4.6m x 6m of the same, but handed, design constructed of brickwork with pitched roofs and ridge heights of 3.38m.

4. There is no statutory definition of the word "incidental". However case law provides authority for how this should be interpreted by decision makers. These authorities indicate that games rooms, play rooms and utility areas are capable of being a type of use that is incidental to the enjoyment of a dwellinghouse. In the leading case of *Emin v SSE [1989] JPL 909* it was held that it was wrong to conclude that an outbuilding could not be said to be required for a use reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwelling provided for primary activities. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier[1]. On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the particular circumstances[2].

5. Turning to the particulars of this case, the Council's argument is that the combined floorspace of the proposed outbuildings is too large to be required for purposes incidental to a dwellinghouse. In this respect there is no absolute limit in percentage terms on the size of outbuildings as compared with the host property. If the actual floor area is considered the total equals about 55 sq.m. which the Council say equates to about 52% of the footprint area of the original dwelling. The correct test is against what exists today and not the original dwelling. I have no calculations to show how the Council arrived at this figure but from the plans provided it would appear that the combined area may be a greater percentage. However, if the upper floor of the house is taken into account as well, then the floor area of the outbuildings compared to the total size of the house does not strike me as being excessive and would be within the bounds of objective reasonableness when considering whether they are incidental.

[1] *Wallington v SoS for Wales [1990] 62 P & CR 150; Holding v FSS [2004] JPL 1405; Croydon LBC v Gladden [1994] 1PLR 30*
[2] *Peche d'or Investments v SSE [1996] JPL 311*

6. The Council's delegated decision report refers to two appeal decisions relating to other properties in the Borough where appeals against the refusal of LDCs for outbuildings were dismissed on the basis of not being incidental. As is clear from the case law outlined above and as an accepted principle when considering planning applications and appeals, each case should be considered on the basis of the particular facts and circumstances.

7. I do not have the full details of the two cases in question but I have taken account of what is before me. In the case of 86 Hitherbroom Road the property was a semi-detached house and the proposed outbuilding "nearly the same floor area as the original ground floor area". As I have already explained the correct approach is to consider the present property or properties and not what existed originally. Even so in the present case according to the Council the combined floor area is only 52% of the area of the original dwelling. In my opinion it may be greater but still less than the footprint of the dwelling which is a detached property on a sizeable plot and not a semi-detached house. The other case only includes partial details and it is impossible to draw any clear comparison. There is reference to "most of the terraced houses in the neighbourhood" which may mean that the property in question was of this type. Based on what is before me and for the reasons given, I find that the circumstances in these appeal cases were materially different and they do not provide a sound basis for withholding an LDC in this instance.

8. The appellant's agent has submitted a number of appeal decisions which concern outbuildings where LDCs were issued on appeal. I am not aware of the precise details for comparison purposes but they do serve to reinforce the point that each case is fact sensitive and that the right approach based on the case law summarised above is to apply an element of objective reasonableness. This I have done and I find that having regard to the particular facts and circumstances the proposed development falls within the definition of buildings required for purposes incidental to the enjoyment of a dwellinghouse. Accordingly it is permitted development by virtue if the rights conveyed by Class E of Part 1 of Schedule 2 of the GPDO 2015.

9. I have had regard to the Council's comment that the floor area of each building would be similar to the London Plan standard for a one person dwelling of 37 sq.m. Firstly, this is not correct as they are only shown as 27.6 sq.m. in floor area well below that standard. Secondly, and more importantly, there is no suggestion that they will be used as independent living accommodation and the LDC I intend to issue will relate to the specific nature of the development described in the application. Should the buildings be used as independent living accommodation this would not be lawful and the Council would be in a position to take enforcement action against such a use.

Conclusion

10. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the outbuildings was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Appeal B

Reasons

11. The development the subject of this appeal comprises an integrated single storey extension which projects from both the sides and the rear of the existing dwelling, wrapping around the house on three elevations. It is clear from the submissions that the area of dispute concerns the terms of clause (j)(iii) of paragraph A.1 of Class A of Part 1 of Schedule 2 of the GPDO 2015. In every other respect it is accepted that the proposed additions would be 'permitted development' by virtue of the allowances contained in Class A.

12. Clause (j)(iii) stipulates that the development is not permitted if "the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse" and "would have a width greater than half the width of the original dwellinghouse". The Council's view is that the width of both side extensions should be considered and on this basis the combined width of 6.75m is over half the width of the original dwellinghouse at about 7.5m. The agent for the appellant argues to the contrary asserting that each side extension needs to be considered separately and at 3m and 3.75m respectively neither exceeds half the width of the original dwellinghouse.

13. There is no definitive formula to be applied and it is a matter of interpretation of the wording of the Order in the context of the facts of this particular proposal. In this case the proposed development is effectively one integrated addition and not a series of separate elements. This suggests to me it should be dealt with as a whole entity and not as separate parts as claimed by the agent. I also consider that the actual words in the Order "…the enlarged part of the dwellinghouse…" indicates that it is the entirety of the proposed development that should be considered and not each "extension" even if such a breakdown were possible, which in this particular case it is not. I therefore consider that the Council's contention is the correct one and that as the combined width of the side projections exceeds half the width of the original dwellinghouse the proposed development is not "permitted development" under the terms of Class A.

14. I have had regard to page 21 of the Department of Communities and Local Government: Permitted Development for Householders Technical Guidance (April 2014) to which the agent refers. This is only guidance and not law. Moreover I do not consider that the actual guidance referred to by the agent assists the appellant's case. It says that "any extension" can only be half the width of the original house. In my view the proposal in this case constitutes one combined extension and so would exceed this limit. I have taken account of the LDC Certificate issued by Guildford Borough Council in respect of two single storey side extensions at a property in West Horsley but this is distinguishable on its facts as the plans supplied show additions on either side with no rear extension linking them together. Consequently the circumstances are not the same and this decision does not alter the conclusion I have reached.

Conclusion

15. For the reasons given above I conclude that the Council's refusal was well-founded and that the appeal should fail. I will accordingly exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decisions:

Appeal A: APP/R5510/X/16/3143072

16. The appeal is allowed and attached to this decision is a Lawful Development Certificate describing the proposed operation which is considered to be lawful.

Appeal B: APP/R5510/X/16/3143074

17. The appeal is dismissed.

N P Freeman

INSPECTOR

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 (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 25 September 2015 operations described in the First Schedule hereto and shown on Plan A attached to this certificate in respect of the land specified in the Second Schedule hereto and edged in red on Plan B 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 development described and shown on the submitted drawings is required for purposes which are incidental to the enjoyment of the dwellinghouse as such and would be permitted development by virtue of the rights conveyed by Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed:

N P Freeman
Inspector

Date: 17 June 2016
Reference: APP/5510/X/16/3143072

First Schedule:

Two outbuildings for use as a store and a playroom.

Second Schedule

Land at 59 Reservoir Road, Ruislip, HA4 7TT.

NOTES:

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the 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, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and as shown on attached Plan A and to the land specified in the Second Schedule as identified on attached Plan B. Any use or operation which is materially different from that described or depicted on these plans, 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.

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.

The Planning Inspectorate

Plan A

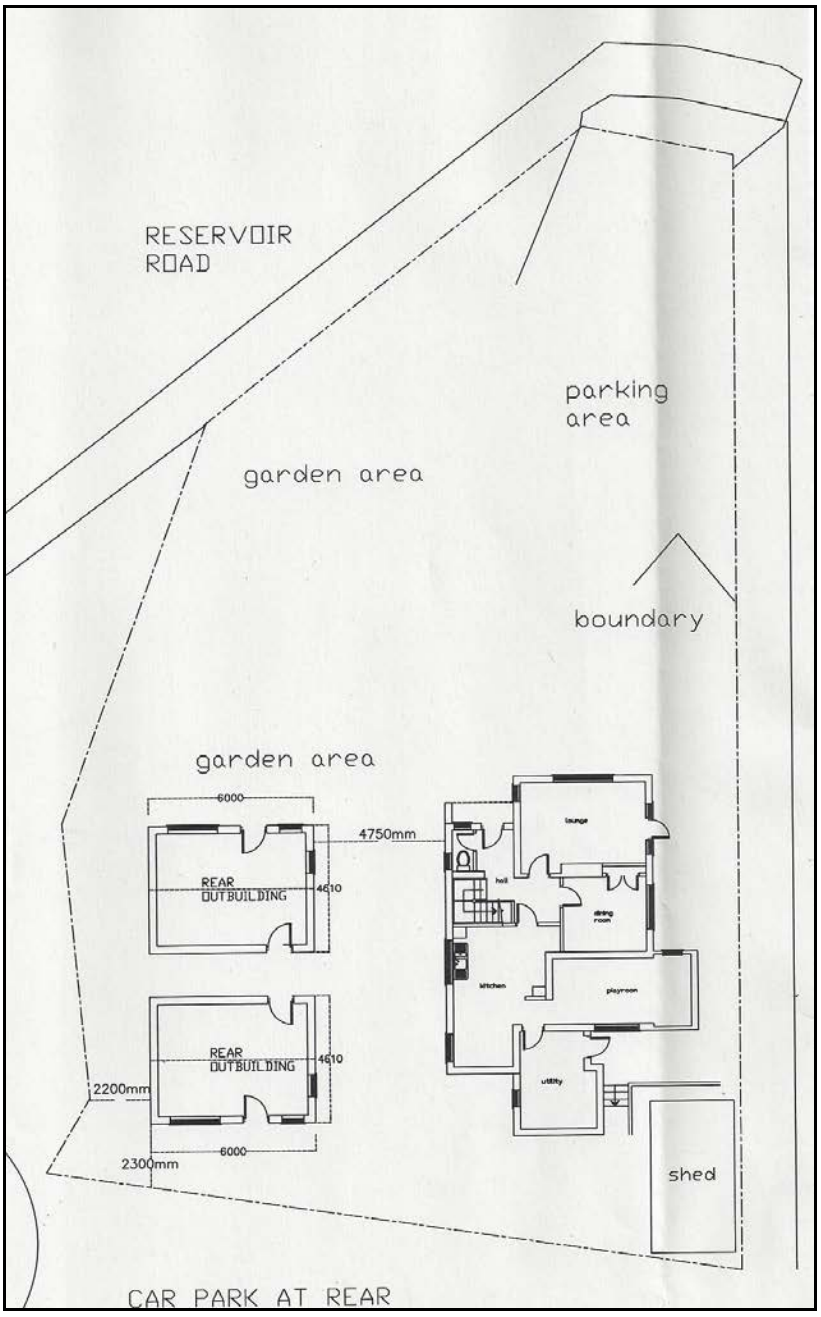
This is the plan referred to in the Lawful Development Certificate dated: 17 June 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

Land at 59 Reservoir Road, Ruislip, HA4 7TT

Reference: APP/5510/X/16/3143072

Do Not Scale:



The Planning Inspectorate

Plan B

This is the plan referred to in the Lawful Development Certificate dated: 17 June 2016

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

Land at: 59 Reservoir Road, Ruislip, HA4 7TT

Reference: APP/5510/X/16/3143072

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