
Appeal Decision

Site visit made on 3 April 2017

by B.S.Rogers BA(Hons) DipTP MRTPI

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

Decision date: 25 April 2017

Appeal Ref: APP/P2365/X/16/3160146

Ferndale, 81 Bank Brow, Roby Mill, Up Holland, Lancashire, WN8 0SY

- 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 R.Bullen against the decision of West Lancashire Borough Council.
 - The application Ref: 2016/0776/LDP, dated 19 July 2016, was refused by notice dated 16 September 2016.
 - 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 erection of domestic storage building.
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Formal Decision

1. The appeal is dismissed.

Preliminary matter

2. The application reference 2016/0776/LDP was made in relation to two proposed buildings within the domestic curtilage of the appeal property. In response to this, the Council issued two separate decisions with the same reference number, both dated 16 September 2016. One decision granted a certificate of lawful development for the erection of a building over the existing swimming pool (referred to as Building A). The other decision, which is the subject of this appeal, refused to grant a certificate of lawful development for a domestic storage building (referred to as Building B).

Reasons

3. Ferndale is a detached bungalow with a very large garden extending mainly to its north side. The vehicular access from Bank Brow is at the southern end of the site and leads to a large vehicular hardstanding, immediately to the north of the bungalow, around which are sited a detached double garage, a swimming pool covered by a large poly-tunnel with an associated plant building, and a metal shipping container. Some distance away, in the northern part of the site, is a disused, hard-surfaced tennis court.
4. The proposed development for which a certificate is sought would be a freestanding building with a footprint of 10m x 8m and a ridge height of 3.9m. The walls and roof would be faced in green profile sheeting and there would be a 4m wide roller shutter door in the east elevation.

5. It is not in dispute that the building would be within the residential curtilage of Ferndale. The Council refers to an ongoing enforcement investigation into an alleged mixed residential/commercial (vehicle store) use of the site. However, both the lawfulness of the residential use and the extent of the residential curtilage must have been recognised by the Council for it to have recently granted an LDC in respect of Building A.
6. There is no contention by the Council that the currently proposed building would fail to comply with the dimensional, or any other limitations set out in Class E.1, E.2 & E.3 of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). The matter in dispute is whether the building would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.
7. Further to this point, the Council accepts that the proposed use for the storage of a boat with trailer, jet skis with trailers, mower, quad bike and motor bike could fall within the scope of such an incidental use. However, it is not accepted that the outbuilding is *reasonably* required for this purpose.
8. The appellant rightly points out that the GPDO uses the unqualified wording "required". However, the courts have indicated that the keynote as to whether the purpose of a proposed outbuilding is incidental to the enjoyment of the dwellinghouse as such is reasonableness^{1 2}. What is abnormal is not necessarily unreasonable but what could be regarded as incidental does not depend on the unrestrained whim of the occupier; there must be an element of objective reasonableness. The size of the building could be an indication as to whether the activities carried on are incidental to the use of the dwellinghouse as such but is not, of itself, determinative of compliance with the terms of Class E. It follows that the onus is on the appellant to show that the proposed outbuilding is reasonably necessary.
9. I was informed at the site visit that the appellant does not live on site and that the dwelling is tenanted. No evidence has been provided to me of the length of the tenancy or when the appellant would be able to occupy the dwelling. It is therefore difficult to see how the building can be said to be required for the indicated storage in the present circumstances. The appellant says that the items he intends to store are currently in his ownership and are stored elsewhere. However, no evidence has been provided as to whether the present storage arrangements are unsuitable, such as to demonstrate a requirement for replacement storage.
10. Furthermore, the items proposed to be stored are of varying sizes. I was unable to gain access to either the double garage or to the shipping container on site to establish their actual use or their availability to accommodate additional storage of some, or all, of the items. Accordingly, it is far from clear that a building of the large size proposed is needed to store the items in question.
11. The items to be stored appear to be of high value and those with trailers appear to require suitable vehicular access so that they can be towed to their place of use. Accordingly, it does not appear reasonable to me to seek to store them in an isolated location, over 40m away from the bungalow, and some

¹ Croydon LBC v Gladden [1994] 1 PLR 30

² Emin v SSE [1989] JPL 909

30m north of the vehicular hardstanding, where surveillance from the dwelling would be limited and where vehicular access would be unnecessarily inconvenient; it may require the creation of a new driveway.

12. In conclusion, on the evidence available to me, the appellant has failed to show that, on the balance of probability, the proposed building is required for a purpose incidental to the enjoyment of the dwellinghouse as such. Therefore, I consider that the Council's refusal to grant a lawful development certificate was well-founded and that the appeal should fail.

B.S. Rogers

Inspector