



Appeal Decision

Site visit made on 24 July 2017

by D H Brier BA MA MRTPI

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

Decision date: 02 August 2017

Appeal Ref: APP/E2530/X/16/3162246

1 Albert Road, Stamford, Lincolnshire PE9 2EA

- 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 P Heath against the decision of South Kesteven District Council.
 - The application Ref S16/2381, dated 1 August 2016, was refused by notice dated 24 October 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 the erection of an outbuilding in the curtilage of a dwelling house to be utilised for purposes incidental to the enjoyment of the dwelling house.
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Decision

1. The appeal is dismissed.

Appeal

2. The development in question is an elongated free standing single storey structure that would be positioned in what is now the rear garden of No.1 Albert Road. Its main axis, as it runs away from the house, would be parallel to the north bank of the River Welland. The application plan, which describes the building as a 'new annex', shows it subdivided internally into a series of rooms annotated 'general store', 'gym', 'office/studio', and 'workshop'. In addition, there is a small entrance lobby and another small room labelled 'lav'.
3. In essence, the appellants' case is based on the premise that the proposed structure would be lawful in that it is an outbuilding to be used for purposes incidental to the enjoyment of the appeal property. As such, it would be 'permitted development' by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO).
4. It is further submitted that the internal layout of the building is designed to accommodate activities incidental to the primary residential use. Reference is also made to the Delegated Officer Report on an earlier proposal, which included a bathroom, where it was noted that "*A studio, gym, study and store are not usually part of primary living accommodation. They are capable in principle of being incidental to the enjoyment of a dwellinghouse.*"

5. The appellants' analysis of the proposal against the provisos set out at E.1 (a) to (j) and E.3, and the conclusion that the various items are either not exceeded, or do not apply, have not been called into question by the Council. The nub of the latter's concern, as expressed in the notice of refusal, is that due to its size, and what it would be used for, the proposed building is not reasonably required for purposes incidental to the enjoyment of No.1.
6. The report referred to above notes that, "*A lavatory....can be regarded as primary living accommodation.*" This may be so as a generality, as a lavatory tends to be part and parcel of what would normally be expected to be found in a dwelling nowadays. However, it seems to me that the context in which this facility would be provided is also important. The provision of a lavatory in association with other facilities held to be incidental to the enjoyment of a dwellinghouse would not, in my view, take it out of the ambit of Class E.
7. The appellants' photographs, which show paraphernalia and equipment of all sorts, including a boat, stored on the land and in 2 sheds at the eastern end of the garden, more or less reflects what I saw when I visited the site. In the light of this, I can appreciate why having a purpose built covered storage facility and a less cramped office/studio may be beneficial to the appellants. However, while the perceived need for a gym facility has been explained, and reference is made to the workshop having been designed to accommodate the appellants' boat and workshop equipment, I am concerned that the precise function of the workshop has not been elaborated upon. Likewise, of the having read that the one of the appellants has an architectural practice, just how it is intended that the office/studio would function has not been made clear either.
8. Mindful that the onus on proving the case in this instance lies with the appellants, the lack of specificity makes it difficult for me to conclude that the proposed building as a whole is genuinely and reasonably required or necessary in order to accommodate all the activities indicated for a purpose incidental to the enjoyment of the appeal property. Moreover, judging by what is indicated on the submitted ground floor and site plan, it also appears that the footprint of the proposed structure is as large, or even a bit larger, than that of No.1. Mindful of *Emin v SSE [1989] JPL 909*, cited by both parties, I accept that the size of the proposed building is not in itself conclusive. Nevertheless, viewing this matter in conjunction with the lack of clarity regarding the use to which elements of the building would be put, I see this as another cause for concern.
9. For the reasons given above, and having regard to all the other matters raised, the circumstances of this case are such that I am not satisfied that the evidence is sufficiently clear to demonstrate that the proposed building would be permitted development. The burden of proof that rests with the appellants has not been discharged.
10. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of an outbuilding in the curtilage of a dwelling house to be utilised for purposes incidental to the enjoyment of the dwelling house at 1 Albert Road, Stamford, Lincolnshire PE9 2EA 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.

D H Brier Inspector