The Planning Inspectorate

Appeal Decision

Site visit made on 25 September 2018

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 05 November 2018

Appeal Ref: APP/P1805/X/18/3198515
Oatlands, Holt Lane, Romsley B62 0ND

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
- The appeal is made by Mr Sam Samrai against Bromsgrove District Council.
- The application Ref:18/00009/CPL is dated 3 January 2018.
- 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 proposed construction of an outbuilding to house a pool and sensory room with associated changing room, plant room and garden equipment garaging.

Decision

1. The appeal is dismissed.

Procedural Matter

2. In their statement the Council rely on the case of Emin v Secretary of State for the Environment and Mid Sussex District Council [1989] JPL 909. The appellant was consulted on this case law and given the opportunity to comment. Therefore my taking account of this case law has not prejudiced the appellant.

Main Issue

3. Planning merits are not relevant in this appeal. My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

4. The appeal is against the non-determination of the application for a LDC within the prescribed period. The Council contend that had it determined the LDC application it would have found the proposed development not lawful. The main issue therefore is whether the Council's deemed refusal to grant a LDC was well-founded.

Reasons

5. Amongst other things, Class E, of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) sets out that the provision within the curtilage of a dwellinghouse "any building…. required for a purpose incidental to the enjoyment of the dwellinghouse as such" is

permitted development. It is not disputed that the proposed building would be within the curtilage of Oatlands and its dimensions would not infringe the requirements of paragraphs E.1. of Class E of the GPDO.

6. My attention has been drawn to case law[1] which refers to the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse." It goes on to say that "the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse."

7. In addition to a therapy pool with associated shower, the proposed building would contain a bar/servery, a sensory room, a changing room, a shower room and a plant room. Having regarding to *Emin* I need to consider whether, in the particular circumstances of this case, it has been shown that the proposed building is reasonably required for the purposes incidental to the enjoyment of the dwellinghouse.

8. In this case, a pool with its associated shower, changing room, and a sensory room are uses not usually part of primary living accommodation. They are capable, in principle of being incidental to the enjoyment of the dwellinghouse. A shower room, whilst it could be regarded as primary living accommodation, in this case would be an ancillary function to the therapy pool and its provision would not be unreasonable. On the other hand, the bar/servery could be regarded as primary living accommodation and it has not been shown that it is reasonably required or that it could not be accommodated within the main dwellinghouse. This weighs against the proposal.

9. Although I have not been provided with full details, the planning history[2] indicates that a family member of the appellant has health needs. In this case the proposed building would provide spacious accommodation with a footprint of approximately 180m². Whilst I note that this revised scheme is a reduction in scale to the plan originally submitted, it has not been shown that a building of this size is required to meet the health needs of the family member or that the uses could not be accommodated in rooms of more modest proportions.

10. It is consistent with *Emin* that size is not in itself decisive but is a material consideration. The proposed building footprint, which reflects the spacious internal accommodation, would almost be the same as that of the main dwellinghouse which has a footprint of approximately 190m². Thus, even on a reduced scale to that originally submitted I consider that the proposed building would be disproportionate in scale to that of the main dwellinghouse.

11. The combination of these factors, on the evidence available to me and having regard to all other matters raised, I consider that, as a matter of fact and degree, it has not been shown that the proposed building is reasonably required for the purposes incidental to the enjoyment of the main dwellinghouse. It would not be permitted development falling within Class E of the GPDO.

[1] Emin v Secretary of State for the Environment and Mid Sussex District Council [1989] JPL 909
[2] 17/00569/FUL

Conclusion

12. For the reasons given above, I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of the proposed construction of an outbuilding to house a pool and sensory room with associated changing room, plant room and garage was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under section 195(3) of the 1990 Act as amended.

Elizabeth Jones

INSPECTOR