



Appeal Decision

Site visit made on 25 October 2019

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 12 November 2019

Appeal Ref: APP/M0655/X/19/3224327

Stud Farm, Lumb Brook Road, Appleton, Warrington WA4 3HL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Paddy Eyes against the decision of Warrington Borough Council.
 - The application Ref 2018/34045, dated 4 December 2018, was refused by notice dated 5 February 2019.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is a detached ancillary building – Use Class C3 (Dwellingshouses)¹.
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Decision

1. The appeal is dismissed.

Main Issue

2. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

4. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
5. The appeal relates to a detached property in residential use. The appellant was seeking to establish that a detached building would be lawful, had it been constructed on the date of the application.

¹ This refers to Class C3 of the Town and Country Planning (Use Classes) Order 1987.

6. The appellant explains that the proposed development would replace an existing building. An application to extend and change the use of the existing building to a self-contained dwelling was refused by the Council and upheld on appeal. The appellant is proposing to demolish the building, as extended irrespective of the planning decisions, and erect a new, single-storey flat roofed structure in the same location. The outbuilding is intended to be used as a home gym with a changing room and shower/toilet facilities, and as a garden store.
7. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse* is permitted development subject to conditions and limitations. The dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.
8. E.4 says that for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance² advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
9. The essential feature of an incidental use is that it should have a functional relationship with the primary use, and the relationship should be one that is normally found. Where a building within the curtilage of a dwellinghouse would contain primary living accommodation, as described above, it would not normally be considered to be in incidental use. The Council is of the opinion that the proposed use of the outbuilding would not be purely incidental due to the changing room, which would constitute primary living accommodation. Moreover, the garden store would be accessed through the gym, which would be an unusual and impractical layout. The plans indicate that the store would be constructed to the same standard as the rest of the building, which the Council considers casts doubt on its intended purpose.
10. The Council also considers the size of the building would be too large for it to be purely incidental. The Court in *Emin*³ confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive.

² Permitted Development Rights for Householders: Technical Guidance, DCLG (April 2017).

³ *Emin v SSE* [1989] JPL 909.

11. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
12. The building is one of several buildings sited within the garden of the main house. I understand the existing outbuildings include a triple garage, store and games room, utility room and a further detached garage. The appellant claims there is no space within the house for a gym, and the garages are all fully utilised for vehicles or other purposes. The additional existing store rooms are used for domestic storage, including sports equipment.
13. The evidence to support the appellants claim is very limited. While I acknowledge a modest home gym within an outbuilding could be considered incidental to the enjoyment of the dwellinghouse, there is no clear justification for an additional building of the size and layout proposed, over and above the space already available. I am not satisfied that the building is genuinely and reasonably required or necessary to accommodate the proposed use or activity. It appears that the appellant is seeking a means to retain an outbuilding on the site of the unauthorised structure, as opposed to having a genuine need for a further building to be used for ancillary purposes.
14. I find that the appellant's evidence is imprecise and ambiguous. Overall, the totality of the evidence presented in support of the appellant's claim does not show that, on the balance of probability, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly, it would not be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a detached ancillary building – Use Class C3 (Dwellinghouses) 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.

Debbie Moore

Inspector