



Appeal Decision

Site visit made on 12 February 2020

by S Hanson BA (Hons) BTP MRTPI

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

Decision date: 2 March 2020

Appeal Ref: APP/N4720/X/19/3241772

104 Lower Mickletown, Methley, Leeds LS26 9AU

- 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.
 - The appeal is made by Ms E Huntridge against the decision of Leeds City Council.
 - The application Ref 19/03416/CLP, dated 3 June 2019, was refused by notice dated 16 September 2019.
 - 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 described as proposed Class E outbuilding for use incidental to enjoyment of the dwellinghouse. Please refer to dwgs 1843 PD 001C; 002D; 003F and 005C and cover letter prepared by Alistair Flatman Planning. The proposed outbuilding will be used for cinema room, music room and fitness suite with changing facilities. Dimensions of building complies with requirements set out in GPDO Part 1, Sched [sic] 2, Class E.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. The header above correctly quotes the description of the proposed development set out on the application form. The decision notice issued by the Council revises the description, but that can only be done with the appellant's agreement where a lawful development certificate (LDC) is sought for proposed development under s192 of the Town and Country Planning Act 1990 as amended (the 1990 Act). As there appears to be no agreement regarding the amended description, I shall therefore consider this appeal as described on the application form.
3. In an appeal under s195 of the 1990 Act against the refusal of a LDC, the planning merits of the matter applied for do not fall to be considered. The decision is based strictly on the facts and on relevant planning law. The standard for the evidence is one of balance of probabilities.

Main Issue

4. The appeal is confined to the narrow remit of reviewing whether the Council's decision to refuse a LDC was well-founded. The decision turns on whether the proposal would be permitted development (PD) under Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

5. Whilst the proposed outbuilding would comply with the restrictions relating to position and size as outlined within paragraphs E.1. to E.3 of the GPDO, the point of contention between the main parties relates to whether the outbuilding would be "*reasonably required*" for a purpose incidental to the enjoyment of the dwellinghouse and, as such, this would need to be satisfied for the proposal to be permitted development under Class E of the Order. If a building or enclosure is not required for a purpose that would be incidental to the enjoyment of a dwellinghouse, then it would fall outside the scope of the permitted development rights granted under Class E and planning permission would be required.
6. When evaluating whether the development is reasonably required for the enjoyment of the dwellinghouse, matters such as personal preference are not conclusive factors. A sense of objective reasonableness is required in all the circumstances of the particular case¹. The proposed outbuilding will not necessarily be reasonably required just because the householder says it is and it is for an appellant to show it is reasonably required and designed with incidental uses in mind. The essential feature of an incidental use being that it should have a normal and functional relationship with the primary use of the dwellinghouse.
7. Case law has established that a wide variety of activities are capable of being considered incidental to the enjoyment of a dwelling and that the size and scale of a building is not, in and of itself, determinative although it is a factor to be considered. 104 Lower Mickletown is a detached property located within a spacious plot. The proposed outbuilding would replace a group of dilapidated buildings and existing garages and would be located within the curtilage of the dwellinghouse, adjacent to the existing annex building. The proposed outbuilding would have a 'L' shape footprint and drawing ref. 1843 (PD) 003 rev F illustrates its undisputed external and internal measurements. It would include a fitness studio with a shower/changing room, a music room, a cinema room and an entrance hall. Its footprint, would be 98 square metres (sqm) compared with the footprint of the house which is noted as being 125 sqm²
8. From the evidence before me, the dwellinghouse, which is described as a four bedroom property with a kitchen, dining room, lounge, utility room and a garden room, has ample room to accommodate a family of four. The annex has space for guest accommodation and is likely to be used as incidental space to the main house. An argument is advanced that the facilities of the type proposed are genuinely required on the basis that people who do not normally reside at the property would visit for the purpose of using those facilities. For instance, the childrens' friends. The rationale in that respect fails to appreciate the meaning and application of Class E(a), because it is based on the need to accommodate those who reside elsewhere and not necessarily the requirements of the occupants of the dwellinghouse itself.
9. There is no explanation why there is a need for separate music room, cinema room and fitness studio to serve the occupants of the main dwelling. Furthermore, a plausible explanation as to why such a large space is necessary has not been advanced. Although there is mention of seating for 4-6 in the

¹ *Emin v SSE & Mid Sussex DC* [1989] EGCS 16 and *Croydon LBC v Gladden* [1994] 1 PLR 30

² Both measurements provided for within the Council planning officer report

cinema room and musical equipment such as the drum kit, keyboards and guitars, I have seen nothing to show the nature and scale of equipment that would be installed in the outbuilding. Reference is made to a 'turbo trainer, which takes up space' for use in the fitness studio but I have no further details concerning why a floor area of some 35 sqm would be required.

10. I acknowledge the reported health condition of Mr Huntridge and the work patterns of the appellant, hence the requirement to undertake more fitness and leisure activity at home. However, given the number of people likely to utilise the space at one time, it is unclear why such a large fitness studio is required. Additionally, there is nothing showing why space that is laid out as a music room and cinema room could not combine as one space.
11. On the particular facts of this case, although the activities designated on the plans fall into categories that, individually or together, may be incidental to the enjoyment of the dwellinghouse, the spaces intended to contain the uses seem much larger than necessary for those purposes and I am unable to conclude that the building is genuinely and reasonably required to accommodate the proposed activities. The appellant has not demonstrated that space for a fitness studio, cinema room and music room, whilst no doubt welcome by them, is reasonably required on such a scale in relation to the host dwelling. Their submission of an application for an LDC and stating a proposed use or uses does not provide a case that what is proposed is or would be reasonably required.
12. Taking all the above points together, it appears that the outbuilding would be far in excess of what might reasonably be required for the proposed uses. As a matter of fact and degree, the proposed outbuilding would have an excessively large space which could not be regarded as incidental to the enjoyment of the dwellinghouse as such.
13. I find that the submitted evidence does not show, on the balance of probabilities, that the proposed outbuilding would be reasonably required for a purpose incidental to the enjoyment of the host dwelling. The proposed development would not, therefore, constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.

Conclusion

14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a garden building 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.

S Hanson

INSPECTOR