



Appeal Decision

Site visit made on 23 January 2020

by Elaine Gray MA(Hons) MSc IHBC

an Inspector appointed by the Secretary of State

Decision date: 14 March 2020

Appeal Ref: APP/N4720/X/19/3229971

Gorse Hill, Linton Common, Linton, Wetherby LS22 4JD

- 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 David Newett against the decision of Leeds City Council.
 - The application Ref 19/00855/CLP, dated 12 February 2019, was refused by notice dated 21 May 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 'certificate of proposed lawful development for the erection of a private gym/fitness facility'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. Where an LDC is sought, the onus of proof is on the appellant and the standard of proof is the balance of probabilities.
4. Gorse Hill is a large detached house set in its own grounds on the outskirts of the settlement of Linton. Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development)(England) Order 2015 allows for 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 as such, or the maintenance, improvement or other alteration of such a building or enclosure.
5. The new building would be accessed from the driveway to the main house. It would comprise the following: yoga studio; cardio and weights room; relaxation room; kitchen; WC; shower/bathroom; changing room; and patio terrace.
6. Whilst the development would be consistent with the provisions of Class E in all other respects, the Council are concerned that there is a lack of evidence to demonstrate that the proposed outbuilding would be for a purpose incidental to the enjoyment of the dwellinghouse.

7. The Council also raise concerns about the distance of around 60m from the proposed location to the main house. However, Gorse Hill sits within a large private plot, and within this context, I do not consider this distance to be excessive. The reuse of the redundant swimming pool area makes sense in practical terms and allows the integration of a number of existing structures. Therefore, I do not consider that the extent of separation of the proposed building from the house would prevent the requirements of Class E being met.
8. The appellant states that the building is required in order to facilitate the relocation of the current gym from the main house on the basis that it is too small for the equipment and machinery required by the users. The relocation would also allow the existing gym room to be used as accommodation for an elderly relative. The new gym would be used only by family members or guests to the house.
9. A yoga room and a cardio/weights room are proposed, and these are uses which are not usually part of primary living accommodation. They are capable, in principle, of being incidental to the enjoyment of a dwellinghouse. Whilst these rooms would be sizeable, I do not consider them to be excessively so in the context of the scale of Gorse Hill and its large household.
10. A kitchen, on the other hand, can be regarded as primary living accommodation. The kitchen in this case is to include a chill-cabinet, sink and facilities to make sports drinks. However, the area shown on the proposed plan is considerably larger than would be needed for these limited facilities. Instead, the proposed kitchen is of a size commensurate with primary living accommodation, and little justification is given as to why this should be necessary.
11. The proposed relaxation room is to incorporate a massage table, loungers and table and chairs, and will typically be used to wind/cool down after sessions. However, these details are to my mind at odds with the layout shown on the proposed floor plan. This space would serve as the main entrance to the building, with direct access to the kitchen, doors to the WC and bathroom areas, and a further door opening out onto the patio. It seems to me that it would be difficult to fit all the furniture into the area shown in a useable manner, particularly leaving enough space to allow access to the various doors.
12. The relaxation room would in fact would be the main circulation point in the building. It would be likely to experience the highest levels of comings and goings and would offer little privacy. As a result, it is questionable whether this space could reasonably function for the stated purposes of relaxation.
13. Although shower/bathrooms and toilets can be regarded as primary living accommodation, such facilities are often ancillary to gym or yoga areas and their provision would not be unreasonable to that extent. It seems to me that the proposed WC and bathroom are of a size in keeping with the facilities. However, the changing room and the unlabelled area leading to the bathroom and changing room add significant floor space in this part of the building. Again, there is little explanation as to why areas of this scale are needed.

Summary and conclusion

14. In summary, I have found that the yoga room and the cardio/weights room, in conjunction with the WC and the bathroom, could in themselves be regarded as

incidental to the enjoyment of the dwellinghouse. They would also be commensurate with the size of the existing household. However, due to its scale, the proposed kitchen could only be considered as primary living accommodation, and the overall proposal would fail to satisfy Class E on this detail alone.

15. Taken together, the kitchen, relaxation room and the bathroom/changing area would occupy approximately 50% of the total floor area of the new building. It seems to me that the kitchen facilities described and the washing/changing facilities could reasonably be accommodated in areas of more modest proportions if they were properly ancillary to the yoga and gym room uses. Furthermore, as discussed above, the justification for the relaxation room is unconvincing.
16. The appellant contends that the Council have not submitted evidence to directly contradict his submissions. However, an LDC application should be approved if there is no evidence to undermine that of the appellant *and* the appellant's evidence is precise and unambiguous. That is not the case here. Having regard to the above, I find that it has not been shown, on the balance of probabilities, that the proposed building is reasonably required for purposes incidental to the enjoyment of Gorse Hill as a dwellinghouse. It would not be permitted development falling within Class E.
17. I therefore conclude that the Council's decision to refuse to issue an LDC was well-founded and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Elaine Gray

INSPECTOR