



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 June 2020

Appeal Ref: APP/D2320/X/19/3239530

Brook Farmhouse, Hall Lane, Mawdesley, Lancashire L40 2QY

- 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 Colin Maloney against the decision of Chorley Borough Council.
 - The application Ref 19/00716/CLPUD, dated 19 July 2019, was refused by notice dated 12 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 the erection of a single storey building.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Following review of the case it appeared that the appeal could be determined without a site visit without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient documentary evidence to understand the nature of the site. Both the appellant and the Council were contacted, and it was agreed that as the appointed Inspector I could proceed on this basis.

Main Issue

3. The main issue therefore is whether the Council's refusal to grant an LDC was well-founded.

Reasons

4. Amongst other things, Class E, Part 1, of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (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 (PD) subject to various restrictions in size and location. It is not disputed that the proposed building would be within the curtilage of Brook Farmhouse and its dimensions would not infringe the requirements of paragraphs E.1. of Class E of the GPDO.

5. For an outbuilding to be PD under Class E it must be used and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse – and not be for primary living accommodation such as a bedroom, bathroom or kitchen.
6. My attention has been drawn to case law¹ 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. Having regard 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 purposes incidental to the enjoyment of the dwellinghouse.
8. In this case, a workshop, store, studio/summer room, gym, washroom and garage space are uses not usually part of primary living accommodation and are capable in principle of being incidental to the enjoyment of the dwellinghouse. A washroom, whilst it could be regarded as primary living accommodation, in this case would be an ancillary function to the gym and its provision would not be unreasonable.
9. Having regard to its size, the proposed building with a floorspace of approximately 120m² would provide spacious accommodation. The building footprint, which reflects its spacious internal accommodation, would be approximately 50% of the volume of the main dwelling. I consider this to be a substantial amount. Although size alone is not in itself decisive it has been established by the Courts² that the term “incidental to the enjoyment of the dwellinghouse” should not rest solely on the unrestrained whim of the householder but connote some sense of reasonableness. It is a matter of fact and degree having regard to the particular building and accommodation³. The size of the proposed building in my view, is an indicator that the uses are unlikely to be ancillary or subordinate to the main dwellinghouse.
10. The appellant refers to an appeal decision⁴, where the Inspector allowed an LDC for an outbuilding to accommodate the storage of classic cars, gym/studio, sauna, WC and boiler room with a footprint of 173m² compared to the 179m² footprint of the main dwelling. The Inspector considered that the outbuilding would be incidental. However, this appeal relies on its own particular circumstances and evidence before the Inspector and thus is not directly comparable to the proposal before me which I have determined on its own merits.

¹ *Emin v Secretary of State for the Environment and Mid-Sussex District Council* [1989] 58 P & CR 416

² *Wallington v Secretary of State for Wales* [1990] JPL 112, *Holding v FSS* [2004], *Croydon LBC v Gladden* [1994] 1 PLR 30,

³ *Peche d’or Investments v Secretary of State & Another* [1996] JPL 311.

⁴ APP/X0360/X/09/2107624

11. An LDC⁵ was granted in 2013 for a building of 84m². I am informed that this LDC was not implemented. The appellant submits that a larger building is now required to accommodate hobbies such as collecting and restoring classic cars, painting and drawing. I am informed that the intended uses cannot be accommodated in the main house and that due to the topography of the site the farmhouse cannot be extended very easily. However, the appellant has not demonstrated why such uses could not be accommodated in a building of more modest proportions.
12. In LDC cases the burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. 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 on the balance of probabilities the proposed building is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse. As such, it would not be permitted development falling within Class E of the GPDO.

Conclusion

13. 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 single storey outbuilding 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.

Elizabeth Jones

INSPECTOR

⁵ LDC Ref: 13/01202/CLPUD