



Appeal Decision

Site visit made on 28 July 2020

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19th AUGUST 2020

Appeal Ref: APP/V1505/X/19/3240737

Tresco, Church Road, Ramsden Bellhouse, Billericay CM11 1RT

- 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 M Hobson against the decision of Basildon District Council.
 - The application Ref 19/00346/LDC, dated 4 March 2019, was refused by notice dated 3 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 for the erection of a single storey detached outbuilding in the rear garden of the property, incorporating sauna, gym, games room and garden store.
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Application for costs

1. An application for costs was made by Mr M Hobson against the Council. This application is the subject of a separate Decision.

Decision

2. The appeal is dismissed.

Preliminary matter

3. The development as described in the application form is "outbuilding". This description is imprecise, and the Council's description of development provides an appropriate level of detail.
4. I saw at my site visit that the outbuilding is substantially complete. This is confirmed in the appellant's statement of case (SOC), which states "CLUED 19/00346/LDC was refused on 3 May 2019 ... Consequently, internal works to complete the outbuilding ceased upon receipt of the LPA's decision". This suggests that the outbuilding was already being constructed at the time the application was determined. However, the date of the application is the relevant date for considering whether an operation would be lawful. The application form confirms that the development had not been started before the application was submitted and there is no evidence before me to suggest that this was not the case. I shall proceed on the basis that an application for proposed development was made and considered by the Council.

Reasons

5. The **main issue** is whether the Council's refusal to issue a LDC is well founded. This turns on whether the appellant can show, on the balance of probability,

- that the proposed operational development would benefit from express planning permission.
6. The appellant claims that the erection of a building with a floor area of 93 m² and measuring 4 m high and 2.25 m to the eaves¹ would be lawful as it constitutes permitted development as defined by the GPDO² and therefore it would be immune from enforcement action. The burden of proof rests with the appellant.
 7. Class E permits buildings incidental to the enjoyment of a dwellinghouse. Paragraph E.1 sets out a list of circumstances where development would not be permitted by Class E. The evidence confirms that the development would accord with the criteria set out in E.1. Paragraphs E.2, E.3 and E.4 have no relevance to this proposal. As such, the Council does not dispute that the development would be permitted, if it is found to be incidental to the enjoyment of the dwellinghouse.
 8. The Council does not dispute that the proposed uses; sauna, gym, games room and garden store would be uses normally accepted as being incidental to the enjoyment of a dwellinghouse. I have no reason to disagree that these uses would have a functional relationship with the primary use of the dwellinghouse.
 9. Notwithstanding compliance with Class E, the Council concluded that the appellant had not shown that "a building of this particular size and configuration is required to accommodate the uses outlined". Furthermore, they consider the building would be "substantial in comparison to the scale of the existing building" and that it would exceed "what could be reasonably said to represent development required for purposes incidental to the enjoyment of the dwellinghouse".
 10. The Courts have held that the word 'required' in Class E should be interpreted to mean 'reasonably required'. The words 'as such' are also important. Thus, in this type of case, the appellant should show that what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse as a dwellinghouse. The onus of proof is squarely upon the applicant and the relevant test is on the balance of probability. It is therefore appropriate to examine the reasons for the development being 'required' under Class E. Otherwise, the GPDO would be open to abuse by proposals involving buildings being constructed for one stated purpose and then being used for another purpose.
 11. The Court in *Emin v SSE [1989] JPL 909* confirmed that regard should be had to the nature and scale of the use to which the building would be put in the context of whether it would be a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse may be an important consideration but is not by itself conclusive. The evidence needs to show 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 appellant advises that the proposed facilities are required to improve the quality of life of the residents of Tresco and that the uses "are such that they could not be carried out within the dwelling itself". An assessment is also

¹ Measurements set out in the Council's delegated report and not disputed by the appellant

² Town and Country Planning (General Permitted Development) Order 2015 as amended

- provided, comparing the size of the proposed development with that of the dwelling. Information pertaining to the Council's approach in respect of similar proposals and potential inconsistencies in decision making is also referenced.
13. In this instance the dwellinghouse is a large dormer style bungalow and the appellant has provided footprint and floor area figures for comparison. The scale of the proposed building would occupy a smaller footprint and floor area than the dwellinghouse. This size comparison is not however determinative in respect of the building being reasonably required. No information as to why the proposed uses cannot be carried out within the dwelling or why such a large building would be required to accommodate these uses is provided.
 14. The Council's evidence identifies the proposed floor areas for each use that the building would be put to, which are significant. The appellant has provided no indication as to the amount, nature and type of equipment that would be used or located within the sauna, gym, games room and garden store. Consequently, it is difficult to come to a firm conclusion that the development is reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose, due to the lack of sufficient detailed evidence.
 15. On the balance of probability and upon the available evidence and as of fact and degree, I find that the development would not be lawful under Class E to the GPDO. This is because the evidence presented fails to show the proposed building would be required for a purpose incidental to the enjoyment of the dwellinghouse.
 16. 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 single storey detached outbuilding in the rear garden of the property, incorporating sauna, gym, games room and garden store is well-founded and that the appeal should fail.

M Madge

INSPECTOR