



Appeal Decision

Site visit made on 2 September 2020

by Thomas Shields MA DipURP MRTPI

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

Decision date: 07 October 2020

Appeal Ref: APP/B0230/X/20/3248051

43 Oakley Road, Luton, LU4 9PT

- 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 Derek and Anthony Healy against the decision of the Luton Borough Council.
 - The application Ref 19/01640/LAWP, dated 18 December 2019, was refused by notice dated 12 February 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which a LDC is sought is the erection of an outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. In an LDC appeal the onus of proof is on the appellant to demonstrate, on the balance of probabilities, that the development would be lawful at the date of the application. Planning policies and the planning merits of the outbuilding are not relevant matters. My decision rests on the application of relevant planning law and judicial authority to the facts of the case.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the proposed outbuilding would benefit from the planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, referred to as "permitted development". There is no dispute that the outbuilding would comply with the size and other limitations within paragraph E.1 of Class E. The single point of dispute is whether or not the proposed outbuilding would be *"required for a purpose incidental to the enjoyment of the dwellinghouse as such"*.

Reasons

4. The appeal site comprises a detached bungalow with garden area to the front, side and rear. The proposed single storey outbuilding would be located towards the rear boundary of the property having a total external area of approximately 76m². Internally there would be three rooms accessed from a central corridor

- with approximate floor areas as follows: gymnasium (21m²), home cinema (21m²), storage room (13m²).
5. The Council have concerns that the scale, size and layout of the proposed outbuilding are such that it could be used and accessed as a separate dwelling in the future.
 6. However, I should point out that these concerns are irrelevant and I take no account of them in reaching my decision. The same could be said of any proposed Class E outbuilding if it were of a sufficient size and position so as to be potentially capable of providing independent accommodation. The LDC application, and this appeal, must be determined solely on the basis of what has actually been proposed. If in the future the outbuilding were to be used for non-incidental purposes as the Council fears, such that it would amount to a breach of planning control, the Council could exercise its enforcement powers.
 7. Established case law¹ indicates that the term "incidental" connotes a subordinate land use in relation to the enjoyment of the dwellinghouse itself. Additionally, the term "required" for the purposes of applying Class E should be interpreted as *reasonably required*, and not so broad as to encompass the "unrestrained whim" of an occupier. With regard to the nature and scale of the activities to be carried on, the size of a proposed building relative to the whole planning unit as a dwellinghouse can be an important consideration, although not conclusive by itself.
 8. In considering Class E proposals the critical test to be applied is firstly;
 - (i) whether the use(s) of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain ancillary or subordinate to the main use of the property as a dwellinghouse, and secondly;
 - (ii) whether the proposed outbuildings are *reasonably required* in order to accommodate those uses.
 9. Applying this test clearly demonstrates that each case will depend on its own particular circumstances. Consequently, the other cases referred to by the appellant at other locations do not lend any significant weight in support of this appeal. It is for the appellant to demonstrate that the proposed uses would be and remain ancillary or subordinate to the main use of the property as a dwellinghouse, and that the floor space allotted to the proposed uses are reasonably required in order to accommodate them.
 10. I have no doubt that the intended uses of the outbuilding have the potential to be classed as ordinarily incidental to the main use of a dwellinghouse, and no argument is made by the Council that they would not be so.
 11. Turning to whether the floor spaces for the uses are reasonably required, the appellant's evidence in respect of the space needed for provision of a home cinema and seating does not strike me as being unrealistic. I cannot say the same however for the proposed gymnasium. No specific details of the number of house occupiers who would use it, or the actual equipment proposed and space needed for it, is provided. Instead the appellant has referred to a "typical home gym" from a website with a generic photograph. This is not precise

¹ *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416

enough for me to be able to assess whether the space proposed is reasonably required in relation to the circumstances of this particular dwellinghouse.

12. The storage room is said to be for storing equipment and accessories used in the gymnasium and home cinema. However, the lack of clarity I have described in respect of the space needed for the gymnasium also relates therefore to the storage space for gym equipment in this room. I am also unclear as to why any storage provision is required for the home cinema given the size of that proposed room by itself.
13. The total floor area of the outbuilding would be smaller than the footprint of the main house and large areas of garden around the buildings within the plot would remain. However, for the reasons set out above I find that the space for the gymnasium use and for storage use has not been justified. The space allocated for these rooms appears excessive in the absence of any clear justification. I am not convinced therefore, on the balance of probability, that the proposed areas of floor space to accommodate these uses are reasonably required.

Conclusion

14. Given the size of the building and based on the evidence provided, I am not persuaded that the uses could not be provided in a more modestly sized building. Overall, the appellant has failed to demonstrate on the balance of probability that the proposed outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse such that it would be permitted development within Class E(a).
15. For all the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed 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.

Thomas Shields

INSPECTOR