



Appeal Decision

Site visit made on 11 November 2020

by Roy Merrett Bsc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 07 December 2020

Appeal Ref: APP/V1505/X/20/3248330
280 London Road, Wickford, Essex

- 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 J Berner against the decision of Basildon Borough Council.
 - The application Ref 19/01514/LDC, dated 29 October 2019, was refused by notice dated 13 December 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 proposed construction of 2 no. outbuildings (10m x 10m x 4m high and 6m x 6m x 3.5m max high).
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the proposed development would be granted planning permission by Article 3, Schedule 2, Part 1, Class E(a) of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

3. In order for an LDC to be granted under s192, it is necessary for the appellant to show, on the balance of probabilities, that the development would be lawful. Under Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development (PD), subject to various provisos.
4. There is no dispute between the parties that the proposed buildings would comply with the physical limitations set out in paragraph E.1. of Class E. However, one of the limitations in this paragraph indicates that the height of a building that does not have a dual pitched roof and is situated more than 2 metres from the boundary of the curtilage of the dwellinghouse should not exceed 3 metres. The smaller of the two proposed buildings would have a mono-pitched roof, with a maximum height of 3.5 metres. Accordingly this building would not be PD on this basis alone.

5. Notwithstanding this, an incidental use is one that has a functional relationship with, but is not integral to, the primary use of the planning unit. The High Court has held that for an outbuilding to be PD under Class E(a) it must be 'reasonably' required. The word 'incidental' signifies an element of subordination, such that the scale of activities is an important consideration in defining such uses, which cannot therefore rest solely on an unrestrained whim, but connotes some sense of reasonableness in the circumstances of the particular case¹.
6. The tests to be applied are therefore whether the proposed use of the outbuildings would be functionally related to the main use of the property as a dwelling, and whether the buildings would be reasonably required.
7. The appeal site is an extensive residential plot. From the information provided it is undisputed that a scaffolding and plant hire business was previously operated from the site, but that this business has now ceased. There is a single residential dwelling located on the site. There are also several outbuildings of various sizes, located around the perimeter of the plot. These buildings contain miscellaneous domestic related items including tools, equipment and furniture. There is also garaging space for several vehicles. Some of the buildings contain non-domestic items, with a very substantial building, both in terms of height and area, in the north-west corner of the site (referred to as a barn), housing scaffolding equipment, vehicles and vintage farm equipment.
8. Two buildings are proposed. From the information provided, the larger of these, in the north-east corner of the plot, would accommodate an All Terrain Vehicle and some classic machinery, currently housed in the barn, along with miscellaneous furniture, currently kept in the swimming pool changing room. It is intended that this arrangement would free up space to enable a camper van to be parked within the barn. The second building would replace existing sheds and would be used to store DIY and gardening equipment for domestic use. From the information provided it seems to me that the use of the proposed buildings for the storage of domestic equipment and vehicles and for hobby related purposes could reasonably be regarded, in principle, as functionally related to the enjoyment of the dwelling.
9. I therefore turn to the question of whether it can be concluded, on the balance of probability, that the buildings are reasonably required. I cannot discount that the proposal may result in a net increase in building floorspace on the site. In any event, although the proposal is to replace existing buildings, I am mindful that the relevant test is one of reasonable requirement, rather than reasonable replacement.
10. From my visit it was apparent that significant storage space was being taken up, within some of the existing outbuildings, by equipment that did not relate to the domestic use of the site, but rather to business purposes which are undisputed to have ceased there. The storage of this equipment, including scaffolding items and non-domestic vehicles, would not be functionally related, and therefore incidental, to the enjoyment of the residential property. It is therefore unclear from the evidence provided, whether the various existing buildings, including the very sizable 'barn' would allow for the desired storage space if redundant, non-domestic equipment were to be removed.

¹ *Emin v SSE & Mid-Sussex District Council* [1989].

11. In addition, there is a distinction to be made between 'desired' space and 'reasonably required' space. It would appear that the storage needs of the appellant in this case include a collection of vintage farm equipment. There is no information before me as to the scale and number of such items involved, and I am unable to rule out that this would constitute an unrestrained demand. Moreover, whilst I recognise that the relationship between the physical scale of the dwelling and that of its associated outbuildings would not by itself be conclusive, when considering the single dwelling on the site and the relatively large number of associated existing outbuildings, together with the significant scale of the barn, in particular, I am not persuaded that the use of the existing and proposed outbuildings as a whole would be proportionate and subordinate to the existing primary residential use.
12. Drawing all the above considerations together, I am not persuaded, on the balance of probability, that the proposed outbuildings are reasonably required and therefore incidental to the enjoyment of the dwellinghouse. Furthermore the dimensions of one of the proposed buildings exceeds the limitations set out in the GPDO.
13. Therefore for the aforementioned reasons, having regard to all other matters, I conclude that the Council's refusal to grant a LDC in respect of "proposed construction of 2 no. outbuildings (10m x 10m x 4m high and 6m x 6m x 3.5m max high)" at 280 London Road, Wickford, Essex 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.

Roy Merrett

INSPECTOR