



Appeal Decision

Site visit made on 10 November 2020

by Jean Russell MA MRTPI

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

Decision date: 20 January 2021

Appeal A: APP/V4250/X/20/3250105

Appeal B: APP/V4250/X/20/3250106

8 Belle Vue, Lowton, WA3 1BN

- **Appeals A and B** are made by Mr A McKechnie under section 195 of the Town and Country Planning Act 1990 (TCPA90) against decisions of Wigan Metropolitan Borough Council (the Council) to refuse to grant certificates of lawful use or development (LDC).
 - **Appeal A** is made pursuant to an application (ref: A/19/87331/LUCP) which was made under section 192(1)(b) of the TCPA90, dated 13 June 2019 and refused by notice dated 12 August 2019. The development for which an LDC is sought is described below.
 - **Appeal B** is made pursuant to an application (ref: A/19/88132/LUCP) which was made under section 192(1)(b) of the TCPA90, dated 8 November 2019 and refused by notice dated 2 January 2020. The development for which an LDC is sought is described below.
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Decisions

1. Appeals A and B are dismissed.

Preliminary Matters

2. The appellant did not describe the proposed development subject to Appeal A on the application form. I shall adopt the Council's description since that was also given by the appellant on the appeal form: a 'single storey detached outbuilding'.
3. The Council refused that application on the basis of drawing nos. 1210619 (existing site plan), 1220619 (proposed site plan) and 1230619 (the proposed building). The appellant submitted a revised plan (1230619 Rev B) of the building with Appeal A. The Council has had and taken an opportunity to consider the revised plan; I can take it into account without prejudicing either party's case.
4. The development proposed under Appeal B was described as a 'detached garden room' on the application form. The original plans included 123456 (location plan) and 0541119 (the proposed building). A revised building plan (0541119 Rev A) was submitted during the course of the application and another (0541119 Rev B) was then submitted with Appeal B. Again, the Council has considered the revised plans and I can fairly take them into account.
5. The detached garden room subject to Appeal B would be smaller than the single storey detached outbuilding subject to Appeal A but otherwise the structures would be similar in siting and design. The original plans submitted with both applications showed that the developments would be used as garden rooms; the revised plans in both cases showed use as a garden room and gym, home office and shed/store.
6. While the formal descriptions of development are important, I shall for convenience refer to the 'proposed outbuildings' when discussing Appeals A and B together. It would be possible for me to allow either or both appeals but not for the appellant to construct two outbuildings.

7. Where an LDC is sought, the onus is on the appellant to demonstrate precisely and unambiguously that the proposed development(s) would have been lawful, on the balance of probabilities, if it or they had been instigated or begun on the date of the application(s). I must consider all evidence relevant to lawfulness; my remit as the decision-maker is not limited to the Council's reasons for refusal. However, I cannot address the merits of the proposed outbuildings.

Main Issue

8. The main issue in respect of both appeals is whether the proposed outbuildings would have been constructed with the benefit of planning permission granted under Article 3 and Part 1, Class E of Schedule 2 to the *Town and Country Planning (General Permitted Development) (England) (Order) 2015* (the GPDO), had they been instigated or begun on 13 June or 8 November 2019 respectively.

Reasons

9. Under Article 3 and Part 1, Class E of Schedule 2 of the GPDO, the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such is currently permitted development (PD) and that was also the case on 13 June and 8 November 2019.
10. There is no dispute that both proposed outbuildings were designed so that they would not conflict with paragraphs E.1, E.2 and E.3, which set out limitations to and conditions on the permission granted by Class E. The Council refused both applications essentially for the reason that the appellant had not shown that the outbuildings, given their proposed designs, scales and usage, would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.
11. An 'incidental' use is one that has a functional connection to a primary use of the planning unit. The incidental use cannot, therefore, be the same as the primary use. The functional connection should be one that is normally found and the incidental use cannot be carried out to such an extent or in such a way that it amounts to a separate primary use in its own right.

The Curtilage of the Dwellinghouse and the Use(s) of the Appeals Site

12. It is necessary for these appeals to be determined with regard to the site context. The dwellinghouse stands in a substantial plot, of which only part is identified on the submitted location plans as being subject to the appeals:
- The 'sites edged red' or appeals site include the dwellinghouse, an adjacent area of domestic garden, the drive and a parking area.
 - Two parcels of adjoining land are edged in blue to denote their ownership by the appellant. I saw that these parcels comprise paddocks used for keeping horses and the appellant has indeed said that '...horses can be seen to be stabled, grazed and exercised at the site'¹.
13. To be permitted under Class E, development must be within the 'curtilage' of a dwellinghouse; that is not the same thing as the 'planning unit'. The curtilage of a building is essentially land that has an intimate association with the building and can be seen to form part and parcel of the building. The planning unit is usually taken to be the unit of occupation, unless some smaller area can be identified which is physically and/or functionally separate as a matter of fact and degree. The curtilage and planning unit may or may not cover the exact same area.

¹ Paragraph 4.12 of the appellant's statement of case for Appeal A and paragraph 4.13 of the Appeal B statement.

14. The outbuildings subject to both appeals are proposed to be constructed on the area of domestic garden within the site edged red. It may be that this particular patch was not always used for residential amenity² but I am satisfied that it was on the application dates and it comprises or forms part of the curtilage of the dwellinghouse. It does not matter that the proposed outbuildings and dwelling would be some 14m apart; the former in both cases would be within the curtilage of the latter as required under Class E.
15. The Council suggests that the appeals site does not wholly fall within the curtilage of the dwellinghouse but that question is irrelevant to whether the outbuildings would be PD. However, I will note that the appeals site is not wholly in residential use; there are stable buildings on the parking area and the drive serves the red and blue land alike. It appears that the planning unit, whether that be the appeals site or whole property, is in mixed use with neither the residential nor equestrian use – as the latter was described by the appellant – being incidental to the other.

The Proposed Outbuildings

16. The proposed outbuilding subject to Appeal A would provide around 80m² of floorspace, which would amount to approximately 80% of the floorspace of the dwellinghouse as it stands; the latter figure would drop to 49% if the house is extended as it might be³. Either way, the outbuilding would be subordinate to the dwelling – and the same could clearly be said for the smaller 63m² garden room that is subject to Appeal B. Whether any structure is permitted under Class E is rarely a matter simply of size in any event.
17. However, scale is relevant in that any 80m² or 63m² building could be used for a variety of activities or purposes which might or might not be incidental to the enjoyment of the dwellinghouse as such. The word 'required' in Class E is taken as meaning 'reasonably required'. In cases such as these, the appellant is expected to identify the purpose and incidental quality of what is proposed in relation to their enjoyment of the dwellinghouse, and that the development is genuinely and reasonably required to achieve that end⁴.
18. Such information was not provided with either LDC application and yet the original plans showed that both proposed outbuildings would be almost entirely used as a 'garden room' with no partitions, fixtures or fittings beyond those required for the WC. The Council found in both cases that, since the appellant had provided little information about the use, the outbuildings would be 'excessive in size for what is assumed to be a space to relax in'⁵.
19. The Council set out a further concern in its appeal statements: that the garden room would be a living room and the outbuildings would be used for residential purposes rather than one that is incidental to residential use. I agree that there are similarities between garden and living rooms but where there is already a lounge in a dwellinghouse, and an outbuilding is designed and used for relaxation specifically in a garden setting, then it would be used for incidental recreational purposes and not as an essential component of the primary living accommodation.
20. Class E does not preclude the construction of a 63m² or 80m² garden room within the curtilage of any dwellinghouse – but it was not enough for the appellant to just say that the large flexible space shown on the plans would be a garden room and

² The Council referred to but did not submit historic aerial photographs.

³ An LDC (ref: A/19/88124/LUCP) was granted by the Council on 23 January 2020 for a 'proposed two storey [extension] at [the] rear and single storey [extension] to [the] side [of the dwellinghouse]' at 8 Belle Vue.

⁴ *Emin v SSE & Mid-Sussex DC* [1989] JPL 909

⁵ Officer reports for both applications

therefore incidental. He did not describe the incidental quality of either outbuilding as originally proposed in relation to his enjoyment of his home or show that the developments would thus be reasonably required on the balance of probabilities.

21. The revised plans and appeals statements propose that both outbuildings would be used not only as a garden room but also as a gym, home office and shed/store. Again, it is possible and indeed not unusual for a building which is in any, all or some of those uses to be found reasonably required for purposes incidental to the enjoyment of a dwellinghouse. The home office would be used by the appellant and members of his family in association with their off-site jobs or studies, and I accept that such activities would be incidental to the ordinary use of their home.
22. However, the appellant said for both appeals that he and his wife would also use the home office for 'administrative duties associated with their equine activities with the booking of competitions, arranging travel to and from, accessing training facilities and co-ordinating vet, dentist, farrier and wider support facilities...' I find it probable that at least some of those activities would take place at the appeals site and be directly related to the equestrian use of the whole property as described by the appellant. If that is right, the home office would be used for purposes that are incidental to the equestrian use as well as to the enjoyment of the dwellinghouse.
23. Similarly, the appellant said in respect of both appeals that the shed/store area would be used for the 'storage of...items associated with the use and maintenance of the wider gardens'. From the words 'wider' and 'gardens' plural, plus the lack of any evidence to the contrary, it can be logically inferred that the shed/store would support the use and maintenance of the paddocks as well as domestic garden.
24. The proposed gym is required in part for the appellant and his wife to maintain their fitness for equine competitions. I would not dismiss either appeal for that reason because there is no reference to such competitions taking place at the property, and people may participate in such events without living on land that is partly in equestrian use. The use of any outbuilding as a home gym is normally considered incidental to the enjoyment of the dwellinghouse as such even if the householder aspires to get fit primarily for some off-site work or hobby activity.
25. However, both appeal statements suggest that the home office and shed/store are required partly in connection with the use of land within the red and blue edged sites for the stabling, grazing and exercising of horses. The Council has not raised this matter but I must decide the appeal on the basis of all evidence before me. The appellant has not shown precisely and unambiguously that either proposed outbuilding is required strictly for a purpose incidental to the enjoyment of the dwellinghouse as such even though that is all which is permitted under Class E.

Other Matters and Conclusion

26. An existing outbuilding on the site looks old and unsuitable for use as a garden room, gym or home office. Had it been shown that all of the intended uses would be incidental to the enjoyment of the dwellinghouse, I would not have found either proposed development 'not required' because of the existing outbuilding. Similarly, I would not dismiss the appeals on the theoretical basis that space might be available in the dwellinghouse, if it is extended, for a home office.
27. The appellant and Council referred to other LDC appeal decisions which concerned whether proposed outbuildings would be PD under Class E. Some of those appeals were successful and others were not but none concerned cases where the site was apparently in a mixed use and the proposed development would or could have been used for purposes incidental to the non-residential activity.

28. I have considered all of the evidence before me. The appellant has shown that the proposed outbuildings subject to Appeal A and Appeal B would be within the curtilage of the dwellinghouse – but not that either would be required solely for purposes incidental to the enjoyment of the dwellinghouse as such. His evidence indicates that, on the balance of probabilities, he requires an outbuilding as proposed partly for those purposes and partly for purposes incidental to the stabling, grazing and exercising of horses within and adjacent to the appeals site.
29. I conclude that, had the construction of the proposed single storey detached outbuilding subject to Appeal A been instigated or begun on 13 June 2019, or the construction of the proposed detached garden room subject to Appeal B been instigated or begun on 8 November 2019, neither would have been permitted under the provisions of Article 3 and Part 1, Class E of Schedule 2 of the GPDO. It follows that the Council's decisions to refuse to grant an LDC in respect of the proposed developments were well-founded and the appeals should fail. I will exercise accordingly the powers transferred to me in s195(3) of the TCPA90.

Jean Russell

INSPECTOR