The Planning Inspectorate

Appeal Decision

Site Visit made on 5 May 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Appeal Ref: APP/H4315/X/20/3264529
Vista Cottage, Millfield Lane, Haydock, WN4 0YF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 John Littler against the decision of St Helens Metropolitan Borough Council.
- The application Ref P/2020/0413/CLP, dated 23 June 2020, was refused by notice dated 14 August 2020.
- The application was made under section 192(1)(b) of the 1990 Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as "new single storey structure to be erected for proposed storage/home gym. The new outbuilding will be clad in dark green".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address and the description of development from the application form.

3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

5. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such* is permitted development subject to conditions and limitations. One of the main areas of dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.

6. The building would be sited to the south-east of the main dwelling on land currently used for residential purposes. It would measure 20 x 25 metres giving a floor area of 500 square metres. The building would be constructed with a dual span roof and would be clad in green sheeting. Internally it would accommodate a running track, a boxing ring, a boxing bag area, a free weights area, a cardio area, a shower and a WC. There would also be an enclosed storage area. It is stated that the use would be as a home gym/storage.

7. E.4 says that *for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse*. The Technical Guidance[1] advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house.

8. Case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a building is required for an incidental purpose will depend on a fact and degree assessment.

9. The Court in *Emin*[2] confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.

10. I acknowledge that an outbuilding serving a purpose as a home gym could be considered incidental to the enjoyment of the dwellinghouse. Similarly, a

[1] Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).
[2] *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

storeroom for garden tools and/or personal belongings could be considered an incidental use of an outbuilding. However, such uses should remain subordinate.

11. In this case, the proposed development is a relatively large building of substantial construction. The plans indicate that the building would accommodate a range of training facilities that could be used contemporaneously. There is no information about how the appellant envisages the facilities would be used nor why the gym needs to be of the size proposed. A home gym may well accommodate small pieces of equipment, such as a running machine and/or a cycle 'turbo', in addition to a bench press and free weights area. However, a boxing ring and running track, alongside a boxing bag area and other equipment suggests the facility goes beyond that of a home gym. Moreover, there would be a large area of circulatory space between exercise areas. It is unclear why this is necessary if the building is to be limited to having a purpose incidental to the enjoyment of the house, since it would be unlikely to be used by multiple people.

12. While it is not necessary for the appellant to demonstrate a requirement for the outbuilding, it must be shown to be genuinely required for a purpose incidental to the enjoyment of the dwellinghouse as such. Given the extent of the facility that would be provided, and because the layout appears to have been designed to be used by a number of people at any one time, I am not satisfied that its true purpose would be as an incidental use. Overall, there is no clear justification for an additional building of the size and layout proposed, and for the purposes described.

13. Further, the Council is of the opinion that the building would be sited forward of a wall forming the principal elevation of the original dwellinghouse and so would not be permitted development by virtue of E.1(c) of the GPDO.

14. The meaning of 'principal elevation' is considered in the Technical Guidance as follows – "*in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation*".

15. The dwelling is situated within a relatively large plot of land accessed from Millfield Lane. It is sited at a right angle to the road with its gable, and attached conservatory extension, facing towards the highway. The main entrance to the bungalow is located on the elevation facing into the garden and towards the driveway. In my opinion, the garden facing (south) elevation is clearly the principal elevation since it contains the main entrance, which is emphasised by a porch, and substantial windows. This elevation forms the front of the house, as opposed to the road facing gable which forms a side elevation. The Guidance sets out that in most cases the principal elevation fronts the main highway. In this case, the house it at right angles to the highway, which is unusual. However, it does not follow that the gable forms the principal

elevation since it contains none of main architectural features of the garden facing elevation and could not be understood to be the front of the house.

16. I appreciate this is at odds with the Council's reasoning on a previous application at the property[3]. However, this assessment was based on an interpretation which relied upon the relationship of the dwelling to the highway. I disagree with this conclusion for the reasons explained above.

17. I understand that the Council recently granted permission for a large building on land adjoining the southern boundary of the appellant's property. This is not relevant to the matters at issue here.

18. Therefore, I consider that the development would be sited on land further forward of a wall forming the principal elevation of the original dwellinghouse and so would not be permitted development.

Conclusion

19. The totality of the evidence presented in support of the appellant's claim does not show that, on the balance of probability, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Further, it would be sited on land further forward of a wall forming the principal elevation of the original dwellinghouse. Accordingly, it would not be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

20. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a "single storey structure to be erected for proposed storage/home gym" 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.

Debbie Moore

Inspector

[3] Ref P/2012/0517.