



Appeal Decision

by J Whitfield BA (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2021

Appeal Ref: APP/T2405/X/21/3266587

2a Woodbank, Glen Parva LE2 9QP

- 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 E Dutton-Hall against the decision of Blaby District Council.
 - The application Ref 20/1020/CLP, dated 6 August 2020, was refused by notice dated 23 October 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 certificate of lawful use or development is sought is erection of single storey building within the curtilage of 2A Woodbank required for a purpose incidental to the enjoyment of the dwelling as such.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Mr E Dutton-Hall against Blaby District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Planning Inspectorate initially intended for this appeal to be determined following a site visit. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
4. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient evidence to understand the nature of the site and surrounding area given the points in dispute. On that basis, as the appointed Inspector I consider I can proceed to a decision on the evidence before me.

Main Issue

5. The planning merits of the development are not relevant to this appeal. The main issue is whether the Council's decision to refuse the application for a certificate of lawfulness was well-founded with particular regard to whether the proposed development would be granted planning permission under Article

3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Reasons

6. Article 3(1) of the GPDO grants planning permission for those classes of development described as 'permitted development' set out in Schedule 2. Class E of Part 1 of Schedule 2 sets out that 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.
7. It is the Council's case that the size and scale of the proposed outbuilding is such that it cannot reasonably be considered to be incidental to the host dwelling and thus would not be permitted development under Class E. In contrast, the appellant considers that Class E does not require an assessment of size of the proposed building, only its proposed use.
8. In *Emin v SSE & Mid Sussex DC [1989]* the Court found that size and scale can be contributing factors in the overall judgement but are not determinative. Rather, *Emin* made clear that the primary consideration is the purpose of the building and whether the scale of that use is required for incidental purposes, with the Courts concluding that the term required should be interpreted as meaning reasonably required.
9. The annotation of the plans shows that the building would be used partially as a gym and partially as an office with a shower room. The LPA says no justification has been provided as to the need for the proposed facilities. However, need is not a factor that has to be demonstrated. In contrast, it seems to me that such activities are intrinsically incidental to the enjoyment of the dwellinghouse and there can be a functional relationship between the occupation of the property as a family home and the use of an outbuilding as a gym and office. The purposes put forward are ordinary activities one may expect to find taking place in a home and ones which are incidental to the primary use as a dwellinghouse rather than integral to it.
10. Nonetheless, regard must be had to the scale of that use in ensuring whether it is reasonably required. The host property is a two-bedroom dwelling. The LPA indicates that the footprint of the host dwelling is approximately 50m². The building is proposed to be sited towards the rear of the garden of the property, close to the shared boundaries with 2 and 2B Woodbank. The building would measure 9m by 5.5m with a footprint of 49.5m². That would result in a building with a footprint amounting to around 100% of the footprint of the house and increase of around 50% of the existing floor space of the dwelling to being given over to an office and gym use. The appellant has provided no evidence as to why a building which provides for a gym and office use of such a scale would be reasonably required. In contrast, I consider the scale of the proposed use of the building would not be commensurate with that of the host dwelling. As a result, it seems to me that the provision of a gym and office of such a scale in the context of the host dwelling could not be said to be reasonably required for incidental purposes.

11. The appellant has referred to other appeal decisions. In Ruislip¹ the Inspector set out the relevant case law in *Emin* and observed that in that case, taking into account the floor space of the entire house, the outbuilding would not be excessive and within the bounds of reasonableness. Whilst full details of that case are not before me, there is nothing within the Inspector's approach in that decision which appears to be inconsistent to the approach I've taken here. Nor, is there anything within that decision which leads me to conclude alternatively on the circumstances and evidence of the case before me.
12. Consequently, I find the development would not constitute the provision within the curtilage of the dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The building would not therefore be permitted under Class E of Part 1 of Schedule 2 of the GPDO and planning permission would not be granted for it under Article 3(1).

Conclusion

13. 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 single storey building within the curtilage of 2A Woodbank required for a purpose incidental to the enjoyment of the dwelling as such 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.

J Whitfield

INSPECTOR

¹ APP/R5510/X/16/3143072