The Planning Inspectorate

Appeal Decision

Site Visit made on 25 June 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5 August 2021

Appeal Ref: APP/X1545/X/20/3266187
The Barn, Steeple Road, Mayland CM3 6EG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr F Wiffen against the decision of Maldon District Council.
- The application ref LDP/MAL/20/00983, dated 25 September 2020, was refused by notice dated 23 November 2020.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 'Act').
- The development for which a certificate of lawful use or development is sought is Form [sic], within the curtilage of the premises a fenced enclosure to provide a drained all-weather surfaced area for exercising horses incidental to the [sic] of the occupation of the premises as a residential house.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr F Wiffen against Maldon District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The appellant states that the development had been commenced at the date of application. Whilst the enclosure and all-weather surfaced area had been constructed at the time of my visit, it is not clear whether it had been completed at the time of the application. The Council dealt with the application under S192 of the Act and so shall I.

Main Issue

4. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class E(a) and Class F(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

Reasons

5. An application under S192(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information

satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

6. The Barn is a substantial dwelling set in generous grounds. The land to the rear of the dwelling has been subdivided by fencing, creating a garden area, beyond which are enclosed grassed areas, which at the time of my visit were used for the grazing of horses, and gates, which provide access to a stable building, concrete pad and an area laid with hardcore which leads to the all-weather enclosure.

7. The application is for the erection of a fenced enclosure to provide a drained all-weather surfaced area for exercising horses. The all-weather enclosure would measure 40m by 21.2m and would be located approximately 74m from the main dwelling. A post and rail fence, with a maximum height of 1.3m would be erected around the perimeter of an all-weather surface, which would comprise a woven sheet over land drains with compacted Type1 granular hardcore topped with a non-woven membrane and Standalone Pro Fibre.

8. The GPDO permits the provision within the curtilage of the dwellinghouse of (a) 'any building or enclosure…required for a purpose incidental to the enjoyment of the dwellinghouse…'. For the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of…pet animals…for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

9. The term 'enclosure' is not defined in the GPDO, however, Class A of Part 2 relates to a gate, fence, wall or other means of enclosure. In this case, whilst the fence and gate would constitute an enclosure, the construction of the all-weather surfaced area would, in my view, be an engineering operation and would not be permitted by Class E. Nevertheless, Class F of Part 2 permits hard surfaces incidental to the enjoyment of a dwellinghouse, which the all-weather surface could reasonably be considered under.

10. Although the Council did not consider the application under Class F, its reasoning, that the scale of the development would not be incidental to the enjoyment of the dwellinghouse at the application site, and the main thrust of the appellant's case, that it would be incidental to the enjoyment of the dwellinghouse, remains the same. There would therefore be no injustice to either the Council or the appellant by my consideration of the appeal scheme under this Class and I shall therefore consider the proposal against Class E and Class F of Part 1 of Schedule 2 the GPDO.

11. The appellant has horses which, he states, are kept for their personal enjoyment and not for commercial purposes. It is not disputed that the keeping of horses could be considered incidental to the enjoyment of the dwellinghouse and the appellant has drawn my attention to an LDC, reference LDP/MAL/19/1180, for the erection of two outbuildings, one of which provides shelter for the horses, which were granted on 6 January 2020 on the basis that they would fall within the scope of Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO).

12. Case law has established that consideration of the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of

reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder[1]. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

13. As set out by the Inspector in APP/V1505/C/16/3161351, the nature and scale of the activities as well as the relative size of a building can be important considerations in determining whether a use of a building is subordinate to the enjoyment of the dwellinghouse. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse.

14. I saw that a substantial part of the site is already given over to the keeping of horses, including the stable building and enclosed grassed areas. The appellant asserts that in order for the horses to remain healthy, they have to be exercised in an all-weather area during wet periods. However, I have no substantive evidence that the enclosed grassed areas would not enable the horses to get sufficient exercise, even during inclement weather. In my experience, it is not unusual for horses to be kept in a field or paddock throughout the year. I see no reason why the land, in this case, would be rendered unsuitable by poor weather and wet ground.

15. Furthermore, as pointed out by the Council, the proposed all-weather area would be of a size typically used for the training of horses and riders and I see no reason why the appellant would not choose to use it in this way. Such activities would, in my view, go beyond the keeping of pet animals. Although the all-weather surfaced area would not be used for commercial purposes, given the above, it is not, in my view, reasonably required or necessary for the keeping of the appellant's horses.

16. Whilst the all-weather area would comprise a comparatively small percentage of the overall appeal site, its area would be substantial compared to the footprint of the dwelling and would be located a significant distance from the main dwelling. Given its scale and distance from the dwelling, it would not appear subordinate to the use of the dwellinghouse. Moreover, its separation from the dwelling by fencing would make it appear functionally separate to the use of the dwellinghouse rather than incidental to it.

17. The appellant suggests other works, such as a pond or rock garden, of a similar size may be unlikely to require an application for planning permission. However, I have no alternative proposals before me and cannot be sure that planning permission would not be required. Such proposals would need to be considered on their own merits.

18. Whilst the GPDO does not set limitations in terms of size or distance from a dwelling, for the above reasons, as a matter of fact and degree, I do not consider that the proposed all-weather surfaced area would be incidental to the enjoyment of the dwellinghouse and is therefore development for which planning permission is required.

19. Since I have found that the proposed all-weather enclosure would not be incidental to the enjoyment of the dwellinghouse, it is unnecessary for me to

[1] *Emin v SSE & Mid Sussex DC* [1989] JPL 909, *Wallington v SoS for Wales* [1990], *Holding v FSS* [2004], *Croydon LBC v Gladden* [1994], *Peche d'or Investments v SSE* [1996]

consider whether the land in question forms part of the residential curtilage of the dwellinghouse.

Conclusion

20. Thus, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a fenced enclosure to provide a drained all-weather surfaced area for exercising horses 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.

M Savage

INSPECTOR