
Appeal Decision

by Gareth Symons BSc(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 October 2021

Appeal Ref: APP/V2255/X/21/3268503
40 Willement Road, Faversham ME13 7SZ

- 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 & Mrs D Harris against the decision of Swale Borough Council.
 - The application Ref: 20/505784/LAWPRO, dated 23 November 2020, was refused by notice dated 18 January 2021.
 - 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 an outbuilding within the garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (GPDO) grants planning permission for the provision within the curtilage of a dwellinghouse of any building or enclosure required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Council has not identified any conflicts with the limitations under Classes E.1, E.2 and E.3 of the GPDO. I have no reasons to disagree. Turning, therefore, to the Council's reason for refusal, whether the purpose of the building would be incidental to the enjoyment of the dwellinghouse requires a judgement to be made about if the activity is one that is, as a matter of fact and degree, reasonably required of the primary residential use. This is the main issue.
3. The consideration to be given to the appeal is a legal determination that does not have regard to matters of planning merit. The onus to make out the case in legal grounds of appeal rests with the appellants and the appropriate test of the evidence is the balance of probabilities.

Reasons

4. The Council advise that the footprints of the existing house and the proposed outbuilding are approximately 59sqm and 81sqm respectively. Albeit the new building would be single storey, its overall size would be unusually large in relation to the modest proportions of the host dwelling. Having regard to well

established case law, the size of the building may not be the conclusive factor. However, it does mean that justifying its purpose is very important.

5. It might not be unreasonable for the building to have a WC to give accessible toilet facilities for less ambulant members of the family given that the toilet in the house is on the first floor. However, even though this is a minor part of the overall use proposed, there is no explanation who those members of the family might be and what needs they have for a ground floor toilet. There is also no clarification about what the store might be used for or the home office. I can envisage that in any household there is a storage need and I accept that many houses have home offices, particularly bearing in mind the growing trend for home working. Nevertheless, there is very scant reasoning to explain why the storage may be needed in this separate building or the background to explain the need for the office. For example, there is nothing about the family situation such as numbers of individuals in the household or ages of children that might reasonably explain the need for separate study/office arrangements.
6. The largest individual room to be created is shown as a playroom/games room. However, there is no substantive explanation of what such a relatively large space would be used for other than in very general terms and that it would have direct access to the garden. The submitted evidence does not show how this space might be reasonably required of the primary residential use.
7. Whilst for the above reasons I intend to dismiss the appeal, I am also concerned about the planning background to this case. A previous LDC application for an identical outbuilding has already been refused by the Council on this site, except that in the earlier scheme the rooms now shown as store and home office were denoted as bedrooms and the large playroom did not have any annotation. That earlier application was only refused by the Council at the end of last year. The appellants explain that the previous LDC application sought to demonstrate that it would be possible, in built form terms, to erect a reasonably large, permitted development building on the plot. The Council says this was an argument put forward by the appellants when seeking planning permission twice for a house at the side of the existing house. Those two applications were also refused only last year.
8. There is nothing to explain why the proposed uses and accommodation needs of the family to justify the outbuilding appear to have changed so quickly from the first LDC application to this one before me. Also, I have already found very little to reasonably explain the spaces now proposed. With these factors in mind, and the previous applications for houses on the site, it is reasonable to conclude that the main driver behind the current LDC scheme is to support the case for a house, rather than an outbuilding required for purposes incidental to the enjoyment of the existing house.
9. All in all, the appellants have not as a matter of fact and degree discharged the burden on them to show on the balance of probabilities that the proposed outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. It would not have planning permission granted by Class E of the GPDO and thus it would not be lawful.

Conclusion

10. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding within the

garden 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.

Gareth Symons

INSPECTOR