The Planning Inspectorate

Appeal Decision

Site Visit made on 8 November 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 November 2021

Appeal Ref: APP/M3645/X/21/3275622
Leyland, Broadbridge Lane, Smallfield RH6 9RF

- 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 Allen against the decision of Tandridge District Council.
- The application ref TA/2021/309, dated 24 February 2021, was refused by notice dated 20 April 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 erection of an ancillary outbuilding.

Decision

1. The appeal is dismissed.

Reasons

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

3. The certificate seeks to establish that the outbuilding would be permitted development under Class E of the GPDO. Class E of Schedule 2 Part 1 gives planning permission for 'the provision within the curtilage of the dwellinghouse of (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'.

4. The Council refused the application on the grounds that the size of the building is excessive for its proposed use, and some of the facilities could be accommodated within the existing dwelling. The large room sizes and the foyer would lend themselves to alternative uses, and the accommodation provided would be ancillary to the residential use rather than incidental.

5. Notwithstanding that the outbuilding is described as 'ancillary', it has been proposed on the basis that it falls within Class E. The main issue in this appeal is therefore whether the building is required for a purpose incidental to the enjoyment of the dwellinghouse as such.

6. It has been established by case law that an incidental use should be functionally related to the primary use (as a dwellinghouse), but not part and parcel of the primary use. The latter would normally be described as being an ancillary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental will be a matter of fact and degree. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and to determine whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. The size of the building in relation to the dwelling is relevant but not a conclusive factor. Case law has also established that a wide range of activities are capable of being considered incidental to the enjoyment of a dwelling.

7. Leyland is a detached bungalow in a large plot in a rural area. The outbuilding would be to the rear of the bungalow, on an area of hard surfaced land that is separated from the front and rear gardens of Leyland by a close boarded fence. It is served by a driveway which provides access to Leyland and an existing garage at the front of the site. The outbuilding would have a footprint of 156 square metres (17.4 metres by 9 metres). The floor plan indicates that it would be divided internally into four separate areas. These are labelled as an office, a storage room, a fitness room and a games room/lounge.

8. The appellant states that the use of the building would be ancillary to the main house, and it would not be self-contained. It has a smaller footprint than the main house, providing a floor area of less than a third of that of the dwelling, which has additional storeys. The outbuilding is required to accommodate the needs of the appellant's family, due to the long term adjustments required following the Covid-19 pandemic, particularly due to the requirements of home working and the minimisation of public recreation. The facilities that would be provided could not be accommodated within the main house.

9. A fitness room can be incidental to the residential use of the dwellinghouse, and in this case the room is of a suitable size, based on the indicative layout provided. The provision of storage space is capable of being an incidental purpose and the room is relatively small. A games room can be incidental to the enjoyment of the dwellinghouse. However, in this case, it is large and includes a lounge area, which is linked to the area that the Council refers to as a 'foyer'. The resulting room is large and excessive in scale for its stated purpose. I cannot therefore conclude that it is incidental. The proposed office is relatively small and in my view is capable of being used for an incidental purpose.

10. Taken as a whole therefore, the space provided by the proposed outbuilding is excessive in scale for the stated purpose. Therefore, on the balance of probabilities, I conclude that it is not genuinely and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. It is therefore not permitted development by virtue of Class E, Schedule 2, Part 1 of the GPDO and planning permission is required.

11. Class E permitted development rights only apply to development within the curtilage of a dwellinghouse. As noted above, the appeal site is separated from the main garden of Leyland by a close boarded fence. However, as I am dismissing the appeal for another reason, I have not sought the comments of

the parties as to whether the outbuilding would be within the curtilage of the dwellinghouse.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawfulness in respect of the erection of an ancillary outbuilding 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.

N Thomas

INSPECTOR