



Appeal Decision

Site visit made on 14 December 2021

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2022

Appeal Ref: APP/M4320/X/21/3277991

51 Sandhurst Drive, Aintree, Liverpool, Merseyside L10 6LU

- 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 and Mrs Brian and Maria Gerrard against the decision of Sefton Metropolitan Borough Council.
 - The application ref DC/2021/00943, dated 7 April 2021, was refused by notice dated 16 June 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 a detached building located in the rear garden.
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Decision

1. The appeal is dismissed.

Main Issue

2. 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) of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

Reasons

3. 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. In an application for a LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
4. 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.
5. Permitted development rights for the erection of a single storey building at the rear of the dwellinghouse to form a games room are said to have been confirmed by the Council on 6 August 1984. However, this relates to a building which has now been removed. It is not disputed that the host dwelling benefits from permitted development rights, what is in dispute is whether the appeal scheme comprises accommodation that is for a purpose which is incidental to the enjoyment of the dwellinghouse.

6. In 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. 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.
7. The main house is a two-storey semi-detached building and garage, with a combined footprint of around 85 square metres (sqm). Although the entrance to the main dwelling is located off Sandhurst Drive, there is a second vehicular access to the rear of the property, from Kempton Park Road. The access is gated, with a drop kerb and hardstanding within the rear of the garden, presumably for the parking of vehicles.
8. The proposed building would have a footprint of approximately 82sqm and would comprise a garden room/games room, with a toilet, basin and shower and a room which is identified as a ‘store’. The games room area would measure approximately 10.5m x 6.5m. A standard full sized snooker table is stated to measure 3.66m x 1.89m, with the minimum room size that is required for comfortable cueing 6.7m x 4.9m. I accept that a games room to accommodate such a table could be incidental to the enjoyment of the dwellinghouse, however, there would be significant space remaining. While the appellants state they are not exclusively interested in snooker, it is not clear what else they intend to use the games room for.
9. The appellants assert that the building would not provide primary living accommodation such as bedrooms and/or a kitchen, however, it would provide a bathroom. The Permitted development rights for householders: Technical Guidance (2019) advises that a purpose incidental to a house would not cover normal uses, such as a bathroom. Although there may be instances where a shower is reasonably required as part of an incidental use, snooker, in my view, is unlikely to generate the need to shower. Consequently, the bathroom proposed would duplicate accommodation provided in the main dwelling.
10. While the appeal building would be single storey and would comply with the size limitations set out in the GPDO, the floor space provided would be significant compared with the floor space provided by the main dwelling. Though size is not a conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse, the word ‘incidental’ connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house.
11. The main door to the outbuilding faces towards Kempton Park Road and whilst bifold doors are shown, they face towards the rear garden of No 53, rather than the host dwelling. The building appears to be laid out to function separately to the main dwelling, with its own bin storage, garden area, parking and access from Kempton Park Road. The layout of the building, its size and orientation away from the main dwelling and the inclusion of a bathroom suggests the building would not be used for purposes which are incidental to the enjoyment of the dwellinghouse.
12. Thus, for the reasons above, I am not persuaded, on the balance of probabilities, that the proposed outbuilding would be for a purpose incidental to the enjoyment of the dwellinghouse and as such, it is not development which is permitted by Class E of Part 1 of the GPDO.

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 a detached building located in the rear 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.

M Savage

INSPECTOR