The Planning Inspectorate

Appeal Decision

Site visit made on 19 May 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 20 May 2022

Appeal Ref: APP/D2320/X/22/3292295
4 Brook Villas, Smithy Lane, Mawdesley L40 2QG

- 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 Phil Taylor against the decision of Chorley Borough Council.
- The application Ref 21/01087/CLPUD, dated 7 September 2021, was refused by notice dated 2 November 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 the erection of an outbuilding on side garden to provide double garage.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing proposed operation which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. In this case that turns on whether the development falls within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).

Reasons

3. It is clear from the Council's remaining reason for refusal and associated documentation that there is no contention that the building in question does not meet all the conditions set out in paragraph E.1 of Class E and, indeed, I have no reason to bring this into question. The Council's decision is based on their claim that the building is not required for a purpose incidental to the enjoyment of the dwellinghouse as such, which is the precise wording used within sub-paragraph (a) of Class E. This is disputed by the appellant.

4. The Planning Practice Guidance makes it clear that the applicant is responsible for submitting sufficient information to support an application. It goes on to state that in the case for a proposed development such as this the applicant needs to describe the proposal with sufficient clarity and precision to enable the local planning authority to understand exactly what is proposed and what the development involves. The key question for the decision maker is whether the development had commenced on the application date, would it have been lawful for planning purposes.

5. The host dwelling is an end of terrace two storey family dwelling with associated gardens, hardstanding areas, outbuildings and lawns. There is an existing garage adjacent to the driveway, but the appellant states that this is too small for his hobby of vehicle restoration. The proposed plans clearly show a simple pitched roof garage within the curtilage of the dwellinghouse. The garage would be capable of being incidental to the enjoyment of the host dwellinghouse. The Council argues that the footprint of the building is approximately 49 square metres which is approximately 74 per cent of the footprint of 4 Brook Villas and therefore would be an unreasonable size in comparison with the relatively modest end-of-terrace property.

6. There is no statutory definition of "incidental" in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers. In the *Emin* case[1] it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. In the *Emin* case it was held that it is wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide more accommodation for secondary activities than the dwellinghouse provides for primary purposes. I have also taken account of the appeal decision[2] to which my attention has been drawn and, in particular, the word "incidental" in the GPDO connotes an "element of subordination of the proposed building in land use terms".

7. I find that the evidence before me illustrates that in cases such as this it is very much a matter of fact and degree based on the specific circumstances of each case. Furthermore, it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. I see nothing in the *Emin* judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Indeed, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so.

8. In this case the appellant presents that the space proposed is genuinely and reasonably required by him and necessary to accommodate its intended use. However, the Council disputes this, stating that in accordance with case law some objectivity is required as to whether the building is reasonably incidental to the dwellinghouse. In order for a building to be considered as permitted development all of it must be required for incidental purposes. In land use terms I see no reason why the proposed garage is not required for incidental purposes and indeed the appellant's clear evidence is that it is reasonably required for incidental land use purposes. It would accommodate parking for two cars for the appellant's vehicle restoration hobby. Therefore, I am satisfied

[1] Emin v SSE & Mid Sussex DC [1989] JPL 909
[2] APP/P0119/X/12/2183050

that the proposed use is incidental to the enjoyment of the dwellinghouse and consequently it falls within Schedule 2, Part 1, Class E of the GPDO.

Conclusion

9. I conclude that the garage would be required in its entirety for incidental purposes. In addition, the size of the building would be commensurate with its proposed incidental use and, as such it would be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.

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 the outbuilding was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A A Phillips

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 7 September 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed garage would be required for purposes incidental to the enjoyment of the dwellinghouse and, as such it would be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.

Signed

A A Phillips
INSPECTOR

Date 20 May 2022

Reference: APP/ D2320/X/22/3292295

First Schedule

Erection of an outbuilding on side garden to provide a double garage.

Second Schedule

Land at 4 Brook Villas, Smithy Lane, Mawdesley L40 2QG

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 20 May 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

Land at 4 Brook Villas, Smithy Lane, Mawdesley L40 2QG

Reference: APP/ D2320/X/22/3292295

Scale: Do Not Scale