



Appeal Decision

Site visit made on 27 July 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 23rd August 2022

Appeal Ref: APP/B3030/X/22/3297671

1 The Willows, Squires Lane, Kings Clipstone, Nottinghamshire, NG21 9BS

- 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 Lee Sipson against the decision of Newark & Sherwood District Council.
 - The application ref 22/00094/LDC, dated 18 January 2022, was refused by notice dated 25 March 2022.
 - 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 proposed demolition of existing outbuilding /garage and replacement garage and storage building
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Decision

1. The appeal is dismissed.

Main Issue

1. The main issue is whether the Council's decision to refuse to grant an LDC was well- founded.

Reasons

2. The Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO) under Class E, Part 1, Schedule 2 permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse subject to falling within specified limitations. The Council accepts that the proposed outbuilding would comply with all of the limitations set out in Class E.1 to E.3. The area of dispute between the parties is whether the proposed outbuilding is required for purposes incidental to the enjoyment of the dwellinghouse.
3. The appellant wishes to demolish the existing outbuilding/garage and construct a replacement garage and storage building. The proposed replacement building would have parking for two cars and four individual storerooms, one of which will have a toilet. The existing garage/outbuilding has a storage area of between 74 and 76.2 square metres. The Council states that the current footprint of the detached dwellinghouse is around 147.81 square metres and the proposed outbuilding would have floorspace of around 121 square metres. Although the footprint of the dwellinghouse has been extended, there is no indication in the wording of Class E that the "original dwellinghouse" is relevant as opposed to the existing dwellinghouse.

4. In the case of *Emin V SSE* [1989] QBD P&CR, the court confirmed that regard should be had to the use to which it is proposed to put a building and to consider the nature and scale of that use in the context of whether the purpose is incidental to the enjoyment of the dwelling house. The physical size of the building in comparison to the dwelling house was not by itself conclusive. However, the words "incidental to the enjoyment of the dwellinghouse" do involve consideration of the relationship between the dwelling and the proposal. There is also a need to consider whether a proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or purpose. The courts have also held that the word "required" in Class E should be interpreted to mean what is reasonably required.
5. The Council's reason for refusing to grant the LDC refers to the space required for the proposed amount of storage and the number of storage rooms. The appellant states that the new proposal provides a small increase of around 3 square metres for storage. However, the existing building is described as a garage/ store and it is the overall floor space of the proposed outbuilding which needs to be considered. Whilst a generous amount of floor space does not in itself preclude the lawfulness of an outbuilding, matters such as personal preference are not conclusive factors.
6. The appellant proposes four separate storage rooms, one of which will have a toilet. One of the storage rooms is said to be storage for winter garden furniture. There are no details provided of the use of existing outbuildings which may already provide storage or have storage capacity. As well as the dwelling house and the existing store, there is a garden room which is unlikely to be in use all of year and may be suitable for storage of outdoor furniture which cannot be left outside with appropriate covering. Similarly, it is not clear why use of another storeroom is needed for suitcases and Christmas decorations. There are no details of why domestic items of this nature could not be stored in the main dwellinghouse given its size despite the lack of a loft conversion.
7. The appellant has referred to the appearance of the proposed outbuilding as being in keeping with the area. However, the proposed outbuilding has to meet all of the criteria set out in Class E irrespective of its appearance.
8. The burden of proof rests with the appellant and the appropriate test is on the balance of probabilities. There is a lack of detailed reasoning for an outbuilding of this size and its purposes particularly the storage element. The appellant has not discharged the burden of proof to show that the proposed outbuilding and its uses would be incidental to the enjoyment of the dwelling house and fall within the wording of Class E.

Conclusion

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the outbuilding was well founded and that the appeal should fail. I will exercise accordingly the power transferred to me under section 195(3) of the 1990 Act as amended.

E Griffin INSPECTOR