



Appeal Decision

Site visit made on 27 July 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 7th September 2022

Appeal Ref: APP/B3030/X/22/3296331

The Paddocks, Southwell Road, Halloughton, Northamptonshire, NG25 0QP

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal in part to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Joshua Turner against the decision of Newark & Sherwood District Council.
 - The application ref 22/00230/LDC, dated 4 February 2022, was refused in part by the Council by notice dated 1 April 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 two proposed outbuildings which formed part of the application made on the 4 February 2022.
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Decision

1. The appeal is dismissed.

Background and Preliminary Matters

2. On 1 April 2022, the Council granted an LDC for the Paddocks namely “*2m high wall, installation of SUDS area, 1.2 m high fencing, 1m high gate and two electrical charging upstands as detailed on drawing Site Plan SC/PH22/LDC, Gridforce Document, Harlequin Storage Tank Document, Electric Car Charging Image and Electrical Car Charging point drawing*”.
3. The Council did not include within that grant the two proposed outbuildings that formed part of the application made on 4 February 2022. The Council did set out in a covering letter dated 1 April 2022, its reasons as to why it was not prepared to include the outbuildings as part of the grant.

Main Issue

4. The main issue is therefore whether the Council’s decision to refuse to grant a lawful development certificate for the two proposed outbuildings was well-founded.

Reasons

5. The appellant wishes to construct two outbuildings which are described as being the western outbuilding and an outbuilding to the centre. The western L-shaped outbuilding would accommodate a swimming pool, gym, studio and shower room and a lobby area. The central rectangular outbuilding would have a garden room, home office with toilet and a domestic heating tank room with storage for the dwellinghouse.

6. The appellant's case is that the proposed development would fall within that permitted under Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). Class E (a) allows for "*the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of a dwellinghouse as such*" subject to conditions and limitations (Section E.1, E.2 and E.3). There is agreement that the proposed outbuildings would meet all these limitations. The area of dispute between the parties is whether what is proposed would be for purposes incidental to the enjoyment of the dwellinghouse. The burden of proof rests with the appellant and the appropriate test is on the balance of probabilities.
7. There is no definition of what constitutes development that is "incidental" but case law has established some guiding principles. In the case of *Emin v SSE* [1989] JPL 909, the court confirmed that regard should be had not only to the proposed uses but also to 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 might be an important consideration but was not by itself conclusive. In particular, there is a need to consider whether proposed buildings are genuinely and reasonably required in order to accommodate the proposed use or purpose. The court cases¹ indicate that the determination of each case is a matter of fact and degree based on the particular circumstances.
8. The proposed outbuildings would cumulatively provide around 150 square metres of floorspace. The existing two storey semi-detached dwelling has floorspace of around 54 square metres. Although the Council refers to planning permission having been granted for a rear extension, I have no details as to when or if that extension will be built out. The size of the outbuildings is generous when compared to the main house the buildings would serve. There is a lack of information about the use of the existing modest dwellinghouse, and why two outbuildings with extensive facilities which would include a swimming pool, a shower room, a gym, a garden room, home office, studio and garden storage are reasonably required by the occupants. It is not the case as stated by the appellant that "It only takes one occupant of a dwelling to enjoy any one of the proposed incidental uses to satisfy the criteria in the GPDO". There is an element of objective reasonableness which is not based on the unrestrained whim of an owner or occupier.
9. The appellant has referred to two Lawful Development Certificates² which have been previously issued for similar uses. One was for a swimming pool and a home gym. The other was for a swimming pool, a home gym and art studio. The Council states that the previous Certificates were granted for smaller more modest buildings with less uses. In any event, I have to consider the size and uses proposed for these specific outbuildings.
10. Applying a test of reasonable objectiveness, the proposed outbuildings would not be subordinate to the existing dwelling but would be disproportionate in terms of size. Whilst this is not necessarily decisive, it is an important consideration which weighs against finding the proposal does fall within Class

¹ Wallington v SoS for Wales [1990]62 P & CR150; Holding v FF[2004]JPL 1405; Croydon LBC v Gladden{1994}1 PLR30

² 20/02446/LDC
20/02272/LDC

E. The appellant has not provided information to show that the two outbuildings of the size proposed are genuinely and reasonably required.

11. The appellant's evidence has therefore not shown on a balance of probabilities that the proposed outbuildings would be required for purposes incidental to the enjoyment of the dwellinghouse. The proposal cannot therefore benefit from permitted development under Article 3 Schedule 2 Part 1 Class E to the GPDO.

Other Matters

12. Works have been undertaken to construct a building on the western part of the appeal site. However, I have limited details in terms of when work commenced and any dimensions. The appellant indicates that work has commenced on permitted development previously authorised by the previous LDCs. If the work is unauthorised, enforcement will be a matter for the Council.
13. A separate planning application for a new dwelling was made on the 7 March 2022 in the same location as the proposed western outbuilding. The appellant is concerned that the planning application was taken into consideration by the Council in reaching its decision to not grant the LDC. It is of course a matter for the appellant as to whether he chooses to pursue different options for the appeal site.
14. The Council's letter dated 1 April 2022 set out the relevant tests to be applied including the Emin case. At page 5, it concludes that *"For the reasons already discussed it is the opinion (of the Council) that the provision of buildings 1 & 2, and the facilities within, would not be reasonably considered as being incidental to the enjoyment of The Paddocks."*
15. Whilst the letter then refers to other matters including the previous certificates and the new planning application, the Council had already made its decision to refuse to grant the Certificate. In any event, I have determined the appeal whilst disregarding the separate planning application and have reached the same conclusion as the Council.
16. The appellant is critical of the manner in which the Council has dealt with the LDC application and the Council has responded to that criticism. However, these are not matters that fall within the remit of this appeal.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the outbuildings 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