



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 04 November 2022

Appeal Ref: APP/C3105/X/22/3295887

15 Arncott Road, Piddington, Oxfordshire OX25 1PS

- 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.
 - The appeal is made by Mrs Victoria Richardson (K-9 Creations) against the decision of Cherwell District Council.
 - The application ref 22/00173/CLUP, dated 19 January 2022, was refused by notice dated 29 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 the erection of a wooden workshop/log cabin onto an existing concrete base measuring up to but not exceeding 18 foot x 10 foot, 2.5m high. Working solely one to one, Monday – Friday 9am – 5pm and Saturday as required 9am – 1pm. All by appointment only. All equipment is portable and freestanding to which won't be installed. It is for a dog rooming service, which includes bathing, clipping and drying of dogs. Maximum of 3 dogs per day. There will be a 15 minute gap between customers to prevent noise and parking issues.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The header above correctly quotes the description of the proposed development set out on the application form. The decision notice issued by the Council revises the description, but that can only be done with the appellant's agreement where a lawful development certificate (LDC) is sought for proposed development under s192 of the Town and Country Planning Act 1990 as amended (the Act). As there appears to be no agreement regarding the amended description, I shall therefore consider this appeal as described on the application form.
3. Section 192(2) of the Act indicates that if, on an application under that 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. In any other case they shall refuse the application.
4. In an appeal under s195 of the Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. Consequently, no site visit was made as it was not necessary for me to view the property in order to determine the appeal.

Main Issue

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the workshop/log cabin building ("the building") would benefit from the planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO"), referred to as "permitted development".
6. There is no disagreement that the building would comply with the size and other limitations within paragraph E.1 of Class E, and I concur with that view. The single point of dispute is whether the proposed outbuilding would meet the requirement of E(a); that it would be *"required for a purpose incidental to the enjoyment of the dwellinghouse as such"*.

Reasons

7. Schedule 2, Part 1, Class E(a) of the GPDO allows for 'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. The appellant considers that under this class, a building in the rear garden at the appeal property used for the purposes as described in the banner heading above would be permitted development. The Council has refused to grant the certificate on the grounds that the use of the building would not be lawful. This is because the proposed use of the building would not be 'incidental' to the enjoyment of the dwellinghouse as such. Therefore, the proposal is not considered to be development permitted by Class E.
8. An incidental use is one which is functionally related to the primary use of the property. The functional relationship should be one that is normally found and not based on the personal choice of the user. For example, where the sole primary use is as a dwellinghouse, the parking of vehicles for the domestic use of the occupiers of the house would be an incidental or ancillary activity and so too would the repair of the occupier's own vehicles. This is because those are uses which differ in character to the residential use but are being carried out as a function of the enjoyment of the dwellinghouse, and the functional relationship is one commonly found.
9. However, the parking of vehicles belonging to other people, who were not residing at the premises, or the repair of vehicles other than those of the occupier's would break that ancillary or incidental link to the primary residential use.
10. In this case, if the proposed use of the building was for the sole benefit of a dog belonging to the occupier of the property, only then might it be considered to be an ancillary or incidental use. However, that is not the case. The proposed use of the building would involve the appellant, working alone, providing an appointment service to customers between the hours of 9.00 and 17.00 Monday to Friday and as required between 9.00 and 13.00 on Saturday. With a maximum of 3 dogs being groomed each day, with a 15 minute gap between customers, this could equate to 18 visiting dogs.
11. In such circumstances, the use cannot be said to be ancillary or incidental to the main residential activity since it is not functionally linked to that residential use, nor does it form an ordinary part of it. This would be the case even if all

the appointment slots were not taken each day and the dogs were collected and returned by the appellant. The set up in the building would be for the benefit of other dogs which do not reside at the property and would have to be brought there in order to be groomed.

12. Whilst the proposed outbuilding itself falls within the physical restrictions of Class E; the development is only permitted development if the building is to be used for purposes incidental to the enjoyment of the dwellinghouse as such. In this instance the proposed use for dog grooming services on a purely commercial basis would not be incidental and would be outside the scope of that permitted under Class E of the GPDO. Therefore, the proposal requires planning permission.
13. I have noted the appellant's comments about the provision of off-street parking within the site and that the building would be sound insulated to minimise noise disturbance. However, those matters cannot influence whether or not the proposed use is lawful. Those matters would be for the local planning authority to decide upon if an application for planning permission was made.
14. For the reasons given above it is concluded that the Council's refusal to grant a certificate of lawful use or development in respect of the use of the proposed building as a dog grooming service 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.

S A Hanson

INSPECTOR