
Appeal Decision

Site visit made on 3 October 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 7TH NOVEMBER 2022

Appeal Ref: APP/Z3635/X/21/3275492

28 Ash Road, Shepperton TW17 0DN

- 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 and Mrs Knight against the decision of Spelthorne Borough Council.
- The application Ref 21/00223/CPD, dated 9 February 2021, was refused by notice dated 29 March 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 reception [*sic*] of a garden room'.

Summary Decision: The appeal is dismissed.

Preliminary Matter

1. In my banner heading, I have taken the description of the proposed development from the application form. It would appear though that this wording contained a typographical error and should have been 'the *erection* of a garden room'; the appellant in the appeal form describes the proposal as for the 'erection of a single storey detached outbuilding'.

Main Issue

2. The main issue is whether the Council's refusal to grant a certificate of lawful use or development was well founded. This turns on whether the proposed outbuilding would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) ('Class E').
3. The assessment to be made is whether, on the facts of the case and in accordance with relevant planning law, the proposed development would be lawful. Planning merits are not relevant and the onus is on the appellant to make their case on the balance of probabilities.

Reasons

4. The appellant considers that the proposed building is permitted development ('PD') under Class E. Class E permits the provision within the curtilage of a dwellinghouse of any building...required for a purpose incidental to the enjoyment of the dwellinghouse as such.

5. There is no dispute that the proposed outbuilding would comply with the dimensional constraints in Class E. Rather, the matter in contention is whether the outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse as such.

The proposal

6. The proposed outbuilding would be located in the rear garden of the host property. The garden is reasonably long and widens at the end. It is in the wider part of the garden, furthest from the house, that the outbuilding is intended to be located. The rear garden at present contains a variety of outbuilding/shed type structures, along with a large roofed pergola/pavilion. As to the proposed uses of the outbuilding, based on the application plans, the main floor space of the outbuilding would be given over to three uses being: storage; music studio; and indoor skateboarding.

Analysis

7. In assessing whether a proposed use is for a purpose incidental to the enjoyment of a dwellinghouse, it is proper to have regard to the nature and scale of the proposed use. Size may be taken into account as part of this assessment but is not conclusive.
8. It should be shown that the building is reasonably required to accommodate the proposed use; the test is one of objective reasonableness. Whether an outbuilding is 'reasonably required' cannot rest solely on the unrestrained whim of the householder. Equally, reasonable aspirations of householders should not be frustrated where the use proposed is sensibly related to the enjoyment of the dwelling. I acknowledge the factual differences as between the *Emin*¹ case referred to by the Council and the present case. However, I consider that the principles laid down in that case remain applicable here.
9. With respect to the nature of uses proposed, domestic storage is commonly accepted in principle as being incidental to the enjoyment of a dwelling. Use for indoor skateboarding, although relatively unusual in a domestic setting, cannot in my view be sensibly distinguished from use for other sports indoors, which are frequently accepted as incidental to the enjoyment of a dwellinghouse.
10. Use as a music studio could be deemed an incidental domestic use if in connection with a musical hobby. I have only limited information though as to the intention here; the appellant is described in submissions as a 'musician', but it is unclear whether or not this term connotes a musical professional. It appears though that the music studio would be used by the children of the family also, at least to some degree. Whilst a professional music studio use in a domestic setting might also be capable of representing an incidental domestic use, in the absence of further evidence in relation to the use proposed, I cannot properly determine whether this would be so in this instance.
11. With respect to size, as noted above, the outbuilding would conform to the dimensional restrictions of Class E and would be single storey in contrast to the host dwelling. As to the space proposed for the uses intended, the building would contain a modest-sized store room. The music studio area would appear

¹ *Emin v SSE* [1989] JPL 909

to be a little more spacious than would be reasonably required for this use, accommodating space for a sofa, along with fairly generous circulation space.

12. The remaining space within the building, taking the majority of the overall floor space, would be used for a skate ramp area. The ramp itself as shown on the application drawing appears to use only approximately half of the floor space in this area. Almost the same amount of space again would appear to be circulation space. No explanation is given for this largely vacant area.
13. Drawing these matters together, whilst the proposed indoor skateboarding use is in principle capable of being incidental to the enjoyment of the dwelling, on the evidence before me and as a matter of fact and degree, the excessive space proposed leads me to find that the outbuilding proposed is not reasonably required to accommodate this use. Thus, it is not required for a purpose incidental to the enjoyment of the dwellinghouse as such.
14. Consequently the outbuilding would not be PD under Class E and would require a specific grant of planning permission which has not been obtained. I note the benefits that the outbuilding would bring to the family, along with the appellant's comment that it would not be harmfully dominant in its context in visual terms. However, planning merits are not relevant to my assessment.

Conclusion

15. 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 erection of a single storey detached outbuilding 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.

Decision

16. The appeal is dismissed.

V Bond

INSPECTOR