



Appeal Decision

Site visit made on 6 February 2023

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 28 February 2023

Appeal Ref: APP/E2734/X/22/3306371

Beechfield Farm, Otley Road, Beckwithshaw, Harrogate HG3 1QL

- 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 M Scott against the decision of Harrogate Borough Council.
 - The application Ref 22/01807/CLOPOD, dated 4 May 2022, was refused by notice dated 1 June 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, A proposed Class E Outbuilding.
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Decision

1. The appeal is dismissed.

Introduction and background information

2. Beechfield farm is a detached residential house, close to the village of Beckwithshaw. The wider Beechfield Farm site includes agricultural, equestrian, and domestic uses in different ownerships. The appeal site lies between the private domestic garden area of the house and the agricultural/ equestrian land. The site boundary is shown in permission 06/02719/RENEW, which renewed consent for a two-storey side extension and glazed link. The current plan is set out in the submitted documents, as is the relevant planning history. During my site visit I was able to view the ground floor layout of the house and its garden.

3. This application is for the erection of an outbuilding in the curtilage of the house and is shown to include rooms for a home office, legal document storage, a therapy gym, and a WC/wet room. The plans do not show any additional primary living accommodation. If such a building meets the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO), then it would constitute permitted development and express planning permission would not be required.

4. The LPA refused the LDC application for the following reason:

'We consider that based on all the facts of the case and having applied a judgement of objective reasonableness, the scale of the 'gym' use and the significant areas of 'dead space' in particular result in a proposed development that is not reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such. As a matter of fact and degree, the development is therefore not permitted development under the terms of Schedule 2, Part 1, Class E of General Permitted Development Order 2015 (as amended).'

The main issue

5. The main issue is whether the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse and in particular whether the proposal is reasonable.

Reasons

6. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if the LPA are provided with information satisfying them that the use or operations would be lawful, if instituted or begun at the time of the application, they shall issue a LDC to that effect; and in any other case shall refuse the application. My decision is based on the facts of the case and judicial authority. The planning merits of the proposal do not fall to be considered.

7. Firstly, there is no dispute that, in terms of its size and location, the proposed building would comply with all of the dimensional and conditional limitations of Classes E.1, E.2 and E.3 of the GPDO. I have no reason to disagree.

8. The dispute is whether the proposed outbuilding is required for a purpose '*incidental to the enjoyment of the dwellinghouse*'. In addition to considering this initial question, it is also necessary to consider whether the building is also '*reasonably*' required for that purpose.

9. The case of '*Emin v SSE & Mid Sussex DC (1989) JPL 90*' is the leading case in relation to the meaning of '*incidental*' in respect of Class E outbuildings. This established that a '*purpose incidental to the enjoyment of the dwellinghouse as such*' is a broad concept and that, whether a building meets this requirement is a matter of fact and degree in each case.

10. With regard to a building being '*incidental to the enjoyment of the dwellinghouse*', case law also confirms that the key question is one of '*reasonableness*'. Case law has established that what is abnormal is not necessarily unreasonable, and that the concept of what is '*incidental to the enjoyment of the dwellinghouse as such*' involves an element of objective reasonableness. It connotes some sense of reasonableness in all the circumstances of any case, and that the word '*incidental*' connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse.

11. The purposes for which the outbuilding is sought are: rooms for a home office, legal document storage, a therapy gym and a WC/wet room. As indicated above the plans do not indicate any primary living accommodation in the proposed outbuilding.

12. In '*Wallington v SSW (1991) 62 &CR 150*', the Court of Appeal held that the words '*as such*' in the Act must mean '*of and incidental to the enjoyment of the dwellinghouse as a dwellinghouse*'. In that case it was held that the mere fact that the occupier may genuinely regard the relevant activity as a hobby was not sufficient to prove that the purpose was incidental to the enjoyment of the dwellinghouse. An objective standard has to be applied in considering the relevance or otherwise of the provisions of the GPDO.

13. There is no dispute in this case that the various uses proposed are, in principle, uses that could be considered '*incidental*'. However, it is a matter of fact and degree as to whether the nature and scale of the proposed incidental uses are '*reasonably required*'.

14. I have noted the appellant's justification for the various uses. However, I have also noted that the Council considers that some of the uses are *'disproportionately large in relation to what would be considered to be reasonably required for the proposed activities and so the space provided by the proposed outbuilding is excessive in scale for the stated purposes'*.

15. In particular, whilst acknowledging that a gym is reasonably required for health reasons, there must be some question about whether or not the proposed size is reasonable given that the equipment need not take up so much space. I agree with the Council that it could be accommodated in a much smaller space.

16. I also agree with the Council that the 'dead space' between the various uses can also be questioned as to whether or not it is 'reasonable' in relation to the desired incidental uses. In fact, this excess space is larger than a combination of the space required for the office, the document storage and the WC/wet room. Overall, therefore it appears to me that, as a matter of fact and degree, the proposed outbuilding would be unnecessarily larger than one which would 'reasonably' be considered as being incidental.

17. Clearly size alone cannot be a determinative factor and, although the area of the outbuilding would only be around 37% of the main dwelling, it does not alter the fact that, in my view, the basic size of the proposal is excessive and, therefore, unreasonable in terms of it being incidental to the enjoyment of the main dwellinghouse. Again, I agree with the Council that a smaller and more efficiently planned outbuilding could still accommodate all of the various incidental uses desired by the appellant.

18. It follows that, based on the facts of this case and having applied a judgement of objective reasonableness, I do not consider that this particular outbuilding can be reasonably said to be required for purposes incidental to the enjoyment of the main dwellinghouse. The proposed development is, therefore, not permitted development under the terms of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended.

19. In reaching my conclusions I have taken into account all of the other matters raised on behalf of the appellant, as well as the other appeal decisions referred to by the Council. However, none of these matters alters my conclusions or changes my decision which has been made on the facts of this case.

20. The appeal fails and a Lawful Development Certificate for the development as applied for is not issued.

Anthony J Wharton

Inspector