



Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 August 2023

Appeal Ref: APP/E3715/X/22/3305073

Westmorlands, Hinckley Road, Wolvey, Hinckley, LE10 3HQ

- 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 Mrs Rabinder Samrai against the decision of Rugby Borough Council.
 - The application ref R22/0505, dated 24 May 2022, was refused by notice dated 12 August 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 erection of a building incidental to the enjoyment of the existing house comprising of a gym, home office and games/garden room.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the documentary evidence submitted.
3. In an LDC appeal, the planning merits of the proposed development are not relevant. My decision rests on the application of the relevant planning law and judicial authority to the facts of the case.

Main Issue

4. The appeal property is a detached bungalow. The appeal development comprises an outbuilding positioned in the garden. The appellant contends that the proposed development is permitted development (PD) by virtue of the provisions of Article 3(1) and Class E(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
5. In an LDC appeal the burden of proof is firmly on the appellant to show that, on the balance of probabilities, at the time of the application to the Council, the development was lawful.
6. The main issue, therefore, is whether the Council's refusal to grant an LDC was well-founded.

Reasons

7. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to that Order. Class E of Part 1 sets out that the provision within the curtilage of a dwellinghouse, "any building required for a purpose incidental to the enjoyment of the dwellinghouse as such" is PD, subject to various restrictions in size and location. There is no suggestion that these would be exceeded.
8. The Council's view is that due to its scale and cumulative nature of the proposed uses, the outbuilding cannot be considered incidental. Furthermore, the size of the outbuilding would not be subordinate or incidental to the primary residency. Thus, the outbuilding would not comply with Class E, Paragraph E.4.
9. For the provision of an outbuilding to be PD under Class E it must be required for a purpose incidental to the enjoyment of the dwellinghouse – and not be for a primary residential use. I need to consider whether, in this particular case, it has been shown that the outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
10. There is no dispute that the drawing submitted with the application shows a building with a footprint of 104.55m² comprising a gym, two home offices, shower room/toilet and a games/garden room. In this case, a gym, games/garden room are uses not usually part of primary living accommodation. They are capable in principle of being incidental to the enjoyment of the dwellinghouse. A shower room/toilet could be regarded as primary living accommodation. The appellant states that the games/garden room would contain a bar and seating area which could also be considered as primary accommodation. It has not been shown that a bar and seating area is reasonably required or that it could not be accommodated within the main dwellinghouse.
11. My attention has been drawn to Case law¹ which refers to the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse.... the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse." Moreover, it is established that the term 'incidental to the enjoyment of the dwellinghouse' "cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case."
12. At 104.55m² there is no dispute that the floorspace of the proposed outbuilding would be an approximate 80% increase to that of the original dwelling. I am informed that planning permissions granted to extend the original dwelling are in the process of being built which on completion will increase the footprint of the original dwelling from 133.3m² to 277m². Thus, the appellant argues, the proposed outbuilding would only equate to a 38% increase and would occupy approximately less than 5% of the curtilage. Physical size of the outbuilding in

¹ Emin v Secretary of State for the Environment and Mid Sussex District Council [1989] JPL 909

comparison to the dwellinghouse may be part of the assessment but is not by itself conclusive. Albeit an existing garage has been demolished, the proposed outbuilding (approximately 20m x 5m) would be large and would provide spacious accommodation.

13. The use of the outbuilding should be subordinate to the use of the house as a dwellinghouse. In this case, the proposed gym space is large enough to accommodate several pieces of equipment. The shower room/toilet is relatively spacious. Whilst the provision of a shower room/toilet as an ancillary function to the gym would not be unreasonable, it is not clear why such provision is reasonably required as an ancillary function to the offices and games/garden room as claimed by the appellant.
14. At 53.55m² the games/garden room would occupy over half the floor area of the large outbuilding. I have had regard to the appellant's 'garden/games room floorplan'. It indicates that the games/garden room would be used for a snooker table, table tennis table, dart board and bar and seating area. Notwithstanding the appellant's submissions regarding the scale of each constituent activity, it has not been shown that the uses could not be accommodated within a building of more modest proportions. In reaching this view, I have had regard to the personal circumstances of the appellant including the inconvenience of storing some of these items in the garage, travelling distance from facilities and home working. Whilst I accept a need for the facilities of the nature proposed, I am not persuaded that they need to be of a size and layout shown to achieve their stated purpose. Moreover, due to its overall size, the proposed outbuilding would not be subordinate in my judgement.
15. The appellant with reference to size and scale, has drawn my attention to three applications² considered by the Council under Class E of the GPDO. I acknowledge the importance of consistency in decision-making. These applications would have been assessed on the facts specific to each site and thus are not directly comparable with the appeal development before me.
16. On the submitted evidence before me, I consider that, it has not been shown that, on the balance of probabilities, the outbuilding is genuinely subordinate and reasonably required for purposes incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it would not be permitted development falling within Schedule 2, Part 1, Class E of the GPDO.

Conclusion

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

Elizabeth Jones

INSPECTOR

² R22/0188, R21/0775, R16/0541.