



Appeal Decision

Site visit made on 26 June 2023

by G Robbie BA(Hons) BPI MRTPI

an Inspector appointed by the Secretary of State

Decision date: 1 September 2023

Appeal Ref: APP/N4720/X/22/3312804

17 Manor Farm Drive, Middleton, Leeds LS10 3RE

- 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 Mr Richard Willis against the decision of Leeds City Council.
 - The application ref 22/05152/CLP, dated 22 July 2022, was refused by notice dated 1 November 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 was described as a '*proposed detached garage / store to rear of dwelling*'.
-

Formal Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have used the description given to the proposal by the appellant on the LDC application form in the banner heading above. Whilst there remains dispute between the main parties as to whether the proposed building should be referred to as a 'detached garage / store' (appellant) or 'outbuilding' (Council), the appellant's submissions have been consistent and clear as to the nature of the proposed development. I have determined the appeal accordingly.

Main Issue

3. The main issue is whether or not the Council's decision to refuse the application for the LDC was well founded.

Reasons

4. Section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (the Act) provides for the making of an application to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful at the time of making that application. The onus in such applications is on the appellant to make out their case to the standard of the balance of probabilities. Issues of planning merit and development plan policies are not relevant to the consideration of such matters.
5. Subject to exclusions, limitations and conditions, Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order (2015) (the Order) permits amongst other things the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Council assessed the proposed development against the criteria set out at paragraph E.1 (a) to (j) and have concluded that the limitations and exclusions set out therein do not apply to the proposal. The Council have also confirmed that the appeal site

does not lie on land falling within the designations set out at paragraphs E.2 (a) to (d) or E.3 of the Order. The appellant does not disagree, and I have not been presented within any compelling reasons to do so either.

6. Nor is there disagreement between the parties that a building for use as a garage and store is capable of being an incidental use to that of the occupation of the land and dwelling on it as a dwellinghouse. The Council also accepts that the building's design is supportive of the appellant's stated intention for the building. However, the main point of contention is rather whether or not the proposed building is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
7. The appeal property is a mid-terraced property in a short, terraced row of five properties. They are set back from Manor Farm Drive, a narrow residential street with car parking along one side, at an angle and front a grassed amenity area bounded by pavements, with a low 'kick-rail' along its Manor Farm Drive side. No. 17 has no direct highway frontage to Manor Farm Drive.
8. To the rear of the house, a reasonably long but narrow rear garden extends towards a paved area and path. The path provides access to / from a gravel-surfaced garage court and turning area to paths that serve the appeal property, neighbouring properties and provide a footpath link back towards Manor Farm Drive. A wooden fence with low concrete posts within it marks the side boundary of the appeal property and extends rearwards alongside the footpath link, creating a narrower 'pinch-point' within the path.
9. The Council question the need for the size of building; firstly, in relation to the size of the dwellinghouse itself, and secondly in terms of how it would be used. What is proposed is certainly a large structure, but the parties agree that it satisfies the conditions and limitations set out within Class E, paragraph E.1 (a) to (j) of the Order. However, in *Emin*¹ the Court confirmed that regard should be had to the use to which it was proposed to put a building and consideration be given to the nature and scale of the use in the context of whether it would be a purpose incidental to the enjoyment of the dwelling house. Physical size in comparison to the dwelling house might be an important consideration but it was not by itself conclusive.
10. With regard to garaging, it is not uncommon for households to have two, or indeed more, cars. The proposed outbuilding would comfortably provide sufficient space for the garaging and parking of at least two cars and for movement between and around them. Given the absence of accessible in-curtilage parking at the front of the property, or indeed on-street parking close to the appeal property, the ability to provide secure and covered parking within a garage is not unreasonable. No indication has been given by the appellant to how the floorspace might be allocated between the garaging and storage uses but, given the modest size of the appeal property itself, acknowledged by the Council in seeking to emphasise the difference in the respective footprint areas, the need for storage perhaps becomes greater. I therefore see nothing fatal with regard to the size of the building relative to that of the main house.

¹ *Emin v SSE [1989] JPL 909*

11. The single personnel door on the elevation facing the property would give direct access to the building from the house and I do not consider that the restrictions that this door's width would place on the size of item that could be taken into the building from this point negates its reasonable use for storage purposes. Indeed, similar width restrictions would no doubt exist with regard to bulky items if it was attempted to bring them through the house and the existing door openings therein. Nor would the positioning of the fenestration be prohibitive to the storage purpose of the building indicated by the appellant.
12. However, with regard to the building's use as a garage, I saw from my visit to the site that there is a footway link between Manor Farm Drive and the parking / garage court at the rear and which runs alongside the appeal property. There is also a footpath link at the bottom of the garden plots of the appeal property and those of its nearby neighbours from which it appears possible to access the appeal property, on foot at least. However, the existing layout of fences and fence posts here, together with a not inconsequential change in levels from the footpath level to parking garage court level, does support the Council's notion that as a garage, it would at best be inconvenient and, at worst, very difficult if not impossible, to access it by car.
13. Whilst the building's vehicle doors would face towards the track from where vehicular access is indicated to be obtained, I am not persuaded that it is a path reasonably capable of providing vehicular access to the rear of the property. Access to it may be more easily and readily accessible on foot, by bicycle or by motorbike for garage purposes from this point, but access by only these methods would call into question the size and scale of the proposed building and whether it would reasonably be used as a garage.
14. Notwithstanding therefore the factors that weigh in favour of the appellant's case, I am not persuaded that vehicular accessibility to the garage / store building is practically possible. On the balance of probabilities, I conclude that the garage / store would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such as set out in the application. The Council's decision to refuse the application was for these reasons, well-founded.
15. The appellant has responded to the Council's references to two LDC appeal cases relating to outbuildings. However, very little detail of either case has been provided by the parties and as such I am not aware of the full circumstances of either. Nevertheless, in relation to the example of the leisure building², it seems from the limited information available that the matter of whether or not its scale was 'reasonably proportionate' turned on the numbers of likely users of the building. With regard to the stable block building³, the number of horses, their ownership and the likely nature of use of the building given its size were all at the forefront of the Inspector's consideration of that matter. I am not therefore persuaded that the conclusions drawn by either party from these examples are directly comparable to the current appeal, and I have in any event determined the matter before me on the evidence available and on the balance of probabilities.

² (partial) Appeal Ref: 3203343

³ (partial) Appeal Ref: 3185514

Conclusion

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed detached garage / store to rear of dwelling 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.

G Robbie

INSPECTOR