



Appeal Decision

Site visit made on 3 October 2023

by R Hitchcock BSc(Hons) DipCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2023

Appeal Ref: APP/C2708/X/23/3316291

2 Greenfield Place, Binns Lane, Glusburn, Keighley BD20 8JH

- 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 R Grattan against the decision of Craven District Council.
- The application ref 2022/24485/CPL, dated 19 October 2022, was refused by notice dated 23 December 2022.
- The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is 'Existing home fitness studio to be used incidental to main dwelling which would not result in any marked increase in activity at the property or traffic movement'.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description in the banner heading above is taken from the application form. However, the appellant's appeal statement clarifies that the LDC as applied for includes the use of the fitness studio by the occupiers residing at 2 Greenfield Place, for domestic storage, and for business use for 1-to-1 personal training. I have considered the proposal on that basis.
3. The appellant advises that the business use of the building would be for up to 2 appointments a day – one in the morning and one in the afternoon. Each appointment would be for an hour and provided by the appellant as a resident of 2 Greenfield Place. The sessions would include discussions around diet and training techniques. This would amount to a total of up to 10 hours per week.
4. The appeal follows earlier decisions of Craven Borough Council and an appeal¹ against a decision to refuse an LDC for a similar use of the former garage. However, in that instance the assessment was against a condition restricting the use of the garage to domestic purposes only.
5. That condition is no longer effective since it was varied under application Ref. 2022/24137/VAR. The revised condition states that '*The garage hereby approved shall be used for purposes incidental to the enjoyment of the dwellinghouse.*' It is the Council's determination that the proposed use would be in conflict with the wording of the amended condition.
6. Further to a request from an occupier of 1 Greenfield Place, in addition to visiting the appeal site, I was accompanied by representatives of both main parties on to that neighbouring property to view the appeal site from there.

¹ APP/C2708/X/21/3271387

Main Issue

7. The main issue is whether or not the Council's refusal to issue an LDC was well-founded.

Reasons

8. An application made pursuant to s192 of the 1990 Act as amended seeks to establish whether proposed development would be lawful if instituted or begun at the time of the application. The onus is on the appellant to demonstrate on the balance of probabilities that the proposed development is lawful. The matter is one of judgement and based on the details provided within the application.
9. Having regard to the restrictive planning condition, it is necessary for the appellant to demonstrate that the proposed use would remain incidental to the residential use of the property. The term 'incidental' is not defined in the planning statutes. A use incidental to the use of the dwelling would normally not be 'part and parcel' of the primary residential use, but would have a reasonably normal functional relationship with a dwellinghouse use. The Oxford English Dictionary defines incidental as '*Occurring or liable to occur in fortuitous or subordinate conjunction with something else of which it forms no essential part; casual*'.
10. There is no dispute between the main parties that a garden gym or domestic store would fall within the scope of 'incidental' when used in conjunction with the primary residential use of the site.
11. In determining whether a material change of use would arise (such that the proposed use could not be construed as incidental), it is necessary to consider whether the business use would lead to a notable change in the character of the property's use. This is a matter of fact and degree to be determined on the individual merits of a case. Environmental impacts may be used to indicate such a change of character of the property, for example: increase in traffic and parking, disturbance to neighbours, the number or timing of visitors or deliveries, abnormal noise or smells, or the need for any major structural changes or major renovations.
12. The fitness studio is sited within the residential curtilage of 2 Greenfield Place, a mid-terraced 2-storey dwelling. The terrace is set in an isolated rural location and orientated side-on to the access road. The former garage is constructed of stone walls with a low sloping flat felt roof. The studio building is detached from the dwelling and its concrete floor is set below the level of the front yard areas forward and east of the main entrances to the terraced houses.
13. The serviced studio has bi-fold doors which open out onto a paved driveway located off a shared drive from Binns Lane - a private no-through road that coincides with a public right of way. Two fixed windows are installed in the eastern elevation of the building which address part of the property at 3 Greenfield Place. The building accommodates a range of fitness equipment and apparatus designed for physical exertion, including free weights, an exercise machine, weight chains and exercise balls.
14. In drawing clients to the site, most would be reliant on private motor transport given its location remote from the nearest population centres and where public transport options are more limited. The plan provided by the appellant shows

an area forward of the garage doors which could accommodate 2 domestic vehicles.

15. Used on a 1 to 1 basis with consultations scheduled separately, there is little reason to anticipate that any more than one client vehicle would be parked at the site at any one time. However, the location is such that unlike urban area equivalents, out-spill of parking would have potential to cause a localised effect. The constrained widths of the private approach road and the shared nature of the drive limit opportunities for parking outside of the site without potentially impeding other vehicles. If regular impeding of vehicular access were to arise, this would be a notable effect of the proposed use.
16. There is little information provided as to the existing parking demand arising from the residential occupancy of the dwelling and therefore whether existing capacity within the defined land ownership would be available at the times when clients might be present at the site.
17. Although the timings are described as being morning and afternoon, it is unclear as to whether this might include any unsociably early times such that client traffic arriving or leaving would result in higher levels of disturbance.
18. Moreover, there is limited information as to what the sessions might entail. The vigorous use of equipment, noises caused by the movement of weight plates or chains, loud levels of verbal encouragement or exertion sounds, would give rise to a propensity for noise emanation from the building. This could persist for much of the duration of the proposed sessions. The effects could be dependent on several factors, including whether other types of equipment might be installed.
19. The building is located within a short distance of the terrace. It overlaps with the frontage of 1 Greenfield Place and is immediately alongside outdoor amenity spaces associated with both Nos.1 and 3. Being particularly close to the main entrance and habitable room windows of No.1, the gym has a distinctly close arrangement with that neighbouring property.
20. No alterations to the existing building are proposed. There is little evidence that the building benefits from either sound insulation or ventilation. In the event that the main doors were left in the open position – more likely during warmer periods, the outbreak of sound would potentially lead to significant noise disturbance given the close proximity of the neighbouring properties. During warmer weather when outside spaces are more likely to be in use, or when windows might be left in the open position, the impact would be greater.
21. Whilst the effects would be no longer than the duration of each session, there is insufficient detail to demonstrate that they would not cause a notable change in the character of the use of the site. The building has a proportionately large footprint relative to the dwelling; it is in a quiet isolated rural location where background noise will be lower than suburban areas and the experience and expectation of tranquillity greater. The regularity and frequency of the proposed use would, in my view, be highly notable given the particularly intimate arrangement with the neighbouring properties.
22. Accordingly, on the basis of the limited information provided and observations at my site visit, I find that the effect of regular visitors attending the site and being trained in the studio would result in a material change in the character of

the use of the site. As such, the proposed use is not incidental to the enjoyment of the dwellinghouse and would be in conflict with the condition limiting the use of the building.

Other Matters

23. I note the appellant's comparison to a home dog grooming business, suggesting that that use would likely give rise to more noise and disturbance. However, for the purposes of a s192, each proposal must be considered on its merits having regard to the particular circumstances of the case.

Conclusion

24. 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 use of the fitness studio for physical training on a commercial basis 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.

R Hitchcock

INSPECTOR