



Appeal Decision

Site visit made on 3 October 2023

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 13 November 2023

Appeal Ref: APP/R0660/X/23/3315045

April Cottage, Holly Lane, Cheshire East, Styal SK9 4JL

- 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 Dr Sadaf Rasul against the decision of Cheshire East Council.
 - The application ref 22/1665M, dated 23 April 2022, was refused by notice dated 16 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 is proposed construction of out building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The Council describes the proposal as an 'outbuilding for garden storage and gym' on its decision notice. However, the appellant states the Council altered the description of the proposed development without their agreement. I have therefore taken the description of the proposed development from the application form.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

Reasons

4. An application under S192(1)(b) of the Act¹ seeks to establish whether any operations proposed to be carried out in, on, over or under land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.
5. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if:
 - i) No enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and ii)They do not constitute a contravention of any enforcement notice then in force.

¹ Town and Country Planning Act 1990 (as amended)

6. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
7. The main thrust of the appellant's case is that the proposed development is granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(GPDO). Schedule 2, Part 1, Class E of the GPDO permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'.
8. This appeal will turn on whether the proposed building would be for a purpose incidental to the enjoyment of the dwellinghouse. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse.
9. April Cottage is a substantial two storey detached dwelling, set in a modest plot. The proposed outbuilding would be single storey, with an irregular trapezium shape, making full use of the north eastern corner of the garden and would replace a detached double garage building. The appellant states that the building would be used mainly as a home gym, with some garden storage.
10. I accept that both of these activities are capable of being a use which is incidental to the enjoyment of the dwellinghouse. However, the proposed building would be substantial in size and although it would not exceed the limitations set out under the GPDO, given the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder.
11. The proposed floor plans show that the building would have a single room, with no delineation between the different activities within it. It is therefore not possible to determine from the information provided, what area would be used for the home gym and what area would be used for garden storage. While it may be that this would change over time, depending upon the needs and demands of the occupants of the main dwelling, this makes it difficult to determine whether the space provided would be genuinely and reasonably required or necessary in order to accommodate the gym and garden storage activities.
12. The appellant suggests that given the range of equipment within a typical gym, the size of the outbuilding is not unduly large. However, the appellant does not explain what equipment they intend to accommodate within the building or the resultant internal space which is likely to be reasonably required to accommodate such equipment.
13. Although there may be a wide variety of equipment available on the market to purchase, I would expect a gym which is used for personal use to have a limited range of equipment, since it would only be used by a modest number of people at any one time. For example, it is unlikely to be necessary to provide multiple sets of the same equipment. The need for floor space for activities

such as weightlifting, is also likely to be modest, since it would be used by a modest number of people at any one time. I would therefore expect the floor space which would be required to be more limited than that which is proposed.

14. The appellant has also not explained what garden equipment they intend to store within the building and therefore what space is likely to be required. The garden associated with the main dwelling is modest and so this limits the type of equipment which is likely to be needed for its maintenance.
15. The shape of the proposed building would also be unusual. The appellant suggests it has been designed in this way in order to fill an enclosed corner where there is already a large, detached garage. This would suggest that the building has been designed to fill the space, rather than accommodate the proposed activities. Indeed, the inclusion of acute angles is likely to limit where gym and garden equipment can be located within the building and is likely to result in wasted space. I am therefore not persuaded that the space provided would be genuinely and reasonably required or necessary for the proposed activities.
16. Thus, it has not been demonstrated, on the balance of probabilities, that the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed activities as incidental to the enjoyment of the dwellinghouse. Consequently, the proposed development would not be permitted by 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 the proposed construction 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.

M Savage

INSPECTOR