



Appeal Decision

Site visit made on 5 December 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 January 2024

Appeal Ref: APP/P0119/X/23/3326813

53 Station Road, Yate, South Gloucestershire BS37 5DF

- 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 Litfield Land Ltd against the decision of South Gloucestershire Council.
 - The application ref P23/01910/CLP, dated 20 June 2023, was refused by notice dated 21 July 2023.
 - 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 the erection of a rear outbuilding to facilitate a double garage and office/store/hobby room ancillary to the main dwelling.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Litfield Land Ltd against South Gloucestershire Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

4. The burden is on the appellant to show that the proposal is lawful, the relevant test of the evidence being on the balance of probability.
5. The appeal property contains a two-storey semi-detached dwelling, with three bedrooms. It is proposed to erect a freestanding residential outbuilding towards the end of the dwelling's lengthy rear garden. The drawings provided show a building measuring around 18.5 m in length and 7.6 m in width. The building would have a pitched roof, with a height above ground level of no more than 2.5 m to the eaves and no more than 4 m to the ridge. The application states that the building would accommodate a double garage/workshop, a home office, store, hobby room and an associated WC.

6. At Article 3, Schedule 2, Part 1, Class E, paragraph E.(a), the GPDO grants planning permission for the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. This is also subject to meeting the limitations, including in relation to the size of any outbuilding relative to the total area of the curtilage, together with those on the height and location of such a structure, set out in paragraphs E.1 to E.3. There is no dispute that the building would be located in the curtilage of the dwelling, that the relevant limitations in paragraph E.1 would be met and that paragraphs E.2 and E.3 do not apply. I concur.
7. Established case law confirms that 'required' for a purpose incidental to the enjoyment of the dwellinghouse as such is to be interpreted as 'reasonably required' and should not rest on the unrestrained whim of a householder. The physical size of a building in comparison to the dwelling can be an important consideration but by itself is not conclusive. Regard should be had to the use to which it is proposed to put the building and to the nature and scale of that use. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the building would be genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose¹.
8. The uses to be accommodated within the building would fall within the range of activities that could properly be described as being incidental to the enjoyment of the dwellinghouse as such. The stated uses would be subordinate to and connected with the running of the dwelling and the domestic and leisure activities of the persons living in it.
9. The double garage/workshop in the building would not be significantly larger than that which would ordinarily be considered reasonable to accommodate two private vehicles, whilst also allowing sufficient space for access and circulation as well as providing room for some storage of tools, equipment and other vehicle-related or domestic items. The garage/workshop part of the building is of a size comparable to that of double garages at other residential properties. Consequently, the garage/workshop would not be of an excessive size in relation to its stated incidental purpose.
10. Nevertheless, few details were supplied concerning the floor areas of rooms and spaces in other parts of the building in relation to the incidental activities that they are proposed to serve. The hobby room in particular would be of considerable size, having a floor area not dissimilar to that of the garage/workshop. No explanation was given regarding the nature and scale of the activity that it is proposed to accommodate within the hobby room, which might have gone towards showing why such a substantial floor area is required. The hobby room would be much larger than a garden shed, cabin or similar type of structure ordinarily used by occupiers of a dwelling for incidental activities such as DIY or gardening. There is little assurance that the hobby room would not be unusually large, having regard to its stated incidental purpose. It is entirely possible that the nature and scale of the activity that could take place in a room of this size would be much greater than that which might normally be associated with activity that is incidental to a dwellinghouse use. Also, there is no obvious reason why such extensive glazing, including

¹ *Emin v SSE & Mid-Sussex DC* [1989] JPL 909.

patio doors and windows, would be required to light a space not used as primary living accommodation.

11. The hobby room is not the only part of the building where the available evidence does not show that the size is commensurate with that which would be reasonably required, having regard to the incidental purposes stated. The WC would have a floor area considerably greater than that required to comfortably accommodate a toilet and handbasin. Around half of the floor area in the WC would have no obvious utility. In addition, the purpose of providing the spacious entrance lobby and internal corridor with its built-in cupboard was not explained or obvious in the context of the uses that would take place in the rest of the building. Therefore, the purpose that these parts of the building would serve in relation to the incidental activities stated is unclear.
12. The above factors create significant doubt as to whether the building is reasonably required to accommodate the incidental uses stated. There is little assurance that some of the rooms and other spaces within the building are informed by and related to those incidental activities. The building footprint, which at around 139 m² is considerably greater than the 113 m² floor area of the dwelling, reinforces my reservations set out above. Accordingly, in the absence of clear and convincing evidence which might show otherwise, I am not persuaded that the building would be other than disproportionately large in relation to what would reasonably be required to accommodate the stated incidental uses.
13. In reaching the above findings, I am mindful that an incidental outbuilding similar to the proposal in terms of its size, siting and external appearance, was recently erected at a neighbouring residential property following the grant of an LDC by the Council². However, an LDC under s192 is not the equivalent, in law, of a planning permission; it simply provides that the matter stated would be lawful at the date of the application. The incidental uses in the neighbouring structure are different, being a games room and music room along with a double garage and office. The Council must have been satisfied on the evidence that the size of the structure in that case was proportionate to those incidental uses and that it was therefore reasonably required.
14. In any event, whether an LDC should be granted for the proposal involves applying planning law to the facts, which are site-specific. In that context, a decision taken in respect of a proposal at a different property is of limited evidential value, as the facts are highly likely to differ. Therefore, the grant of an LDC in respect of the neighbouring structure can only be given limited weight. I understand why the appellant feels that the reasons for refusing a previous LDC application at the property have been overcome. Be that as it may, whether services and utilities in the building would be separate from those in the dwelling is not, by itself, determinative of an incidental use.
15. Accordingly, based on the available evidence and on the balance of probability, I am not persuaded that the building would be reasonably required or necessary to accommodate the stated uses and so achieve the purpose of being incidental to the enjoyment of the dwellinghouse as such and the building is not granted planning permission by Class E. It follows that the appellant has been unable to show that the proposal would be lawful for planning purposes.

² Council Ref: P20/02213/CLP.

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 the erection of a rear outbuilding to facilitate a double garage and office/store/hobby room ancillary to the main 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.

Stephen Hawkins

INSPECTOR