
Appeal Decision

Site visit made on 24 November 2023

by Laura Renaudon LLM LARTPI Solicitor

an Inspector appointed by the Secretary of State

Decision date: 19 January 2024

Appeal Ref: APP/B3030/X/23/3323994

Gable Oak, Old Main Road, Bulcote, Nottingham NG14 5GU

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Paul Grayson against the decision of Newark & Sherwood District Council.
- The application Ref 23/00144/LDCP, dated 25 January 2023, was refused by notice dated 19 April 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 a proposed garden room (resubmission of 22/01535/LDC).

Summary Decision: the appeal is dismissed.

Main Issue

1. The main issue between the parties to the case is whether the proposed building is required for a purpose incidental to the enjoyment of the dwellinghouse as such. It is common ground between the parties that if it is, the development would meet all the relevant criteria of Article 3 of and Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 and would therefore benefit from the planning permission conferred by that Order.

Reasons

2. The subject dwellinghouse lies in the Green Belt, and I understand from the parties' cases that the appeal site has been the subject of previous building works. The result has been that a proposal similar to the present one was considered a disproportionate addition and hence inappropriate development in the Green Belt, meaning in turn that an express grant of planning permission was not forthcoming.
3. In order to benefit from the relevant permitted development rights, the proposed building must be required for a purpose incidental to the enjoyment of the dwellinghouse as such. The burden of proof in such applications lies upon the applicant (now the appellant) to demonstrate the case to the standard of probability. The planning merits are irrelevant.
4. The proposal, described as a garden room, is described as being required for two purposes. The first is to provide a space for relaxation and enjoyment, as well as for entertainment. The second is to provide an internal walkway between the house and an existing housed swimming pool.

5. The Council take issue with the first purpose because the garden room is depicted as housing a large dining table which, say the Council, is intended to be used for a purpose that would functionally amount to a primary residential use rather than one incidental to the enjoyment of the dwellinghouse. I agree that, despite its limited size, the use of the building as an entertaining space, in view of the facilities already available, is not required for a purpose incidental to the enjoyment of the dwellinghouse as such. The suggestion that guests would otherwise be asked to sit in the dwellinghouse when people are gathering outdoors does not answer the question raised why those guests cannot also sit outdoors. If indoor dining space is required, the obvious place for it is in the house.
6. I am not satisfied that the garden room is reasonably required for its second intended purpose, of providing an internal walkway between the house and the pool building, because it does not satisfactorily meet that purpose. The pool building is presently some 15m away from the house. If the garden room were to be constructed as intended, the nearest entrance point to it would still be some 6m away from the nearest door to the house. At the other end, the nearest door to the pool building entrance would be around 1m away from it. The requirement to pass through an additional two entrance doors in order to save only a little over half the outdoor distance required strikes me as rather inconvenient.
7. Even if that were accepted, however, the appellant's case is not that the internal walkway is primarily required for a purpose incidental to enjoying the house. It is required for a purpose incidental to enjoying the pool. The appellant points out that in the darker months and when it is raining, the use of the pool diminishes due to the lack of internal connection between the house and the pool. The garden room is intended, it is said, to provide a sheltered walk for most of the route between the house and pool outbuilding and would increase the use of the pool as a result.
8. Thus the garden room is clearly intended to facilitate, at least in part, the enjoyment of another outbuilding: and this takes it outside the scope of what is permitted by Class E, which does not describe as permitted development outbuildings that are required for a purpose incidental to the enjoyment of other outbuildings, but only of the dwellinghouse.
9. For these reasons I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed garden room at Gable Oak, Old Main Road, Bulcote 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.

Formal Decision

10. The appeal is dismissed.

Laura Renaudon

INSPECTOR