



Appeal Decision

Site visit made on 29 January 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2024

Appeal Ref: APP/D2320/X/23/3330340

Lowe Fold Farm, Coppice Lane, Heapey, Lancashire PR6 9DD

- 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 McCann against the decision of Chorley Borough Council.
 - The application ref 23/00581/CLPUD, dated 7 July 2023, was refused by notice dated 31 August 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 2no. outbuildings within garden curtilage of a domestic dwelling.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

3. There is no dispute between the parties that the proposed building would meet the conditions and limitations set out in paragraph E.1, Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). The matters in dispute between the parties are whether the proposed outbuildings would be required for a purpose incidental to the enjoyment of the dwellinghouse.
4. Permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a building is required for an incidental purpose will depend on a fact and degree assessment.
5. *Emin v SSE & mid Sussex DC* [1989] JPL 909 established that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. 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 proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.

6. It is a requirement of paragraph E.(a), Class E of the GPDO that the proposed development should be "required for a purpose incidental to the enjoyment of the dwellinghouse as such". The word "required" should be interpreted as genuinely and reasonably required or necessary in order to accommodate the proposed use or activity. The burden of proof in such matters is upon the appellant to show that the proposal is genuinely and reasonably required.
7. The use of an outbuilding for a gym and a garage could be considered incidental to the enjoyment of the dwellinghouse, as could an outbuilding used for a cinema room, games room, workshop and an office. The smaller of the two buildings would have a footprint similar in size to the dwelling, whereas the larger building would be substantially larger. However, size alone is not decisive. In assessing whether the building is genuinely and reasonably required for incidental purposes it is necessary to apply objective reasonableness in consideration of all the relevant facts and circumstances.
8. With regard to the larger building, this would accommodate approximately 12 cars. Whilst the cars would be for personal use by the appellant and there is no limit for how many cars one can own, the use of the outbuilding for the storage of 12 cars would not be subordinate to the dwelling and far exceeds what could reasonably be considered to be incidental to the enjoyment of the dwellinghouse.
9. In addition, I acknowledge the appellant's son's ambitions to become a professional athlete and that a gym would assist in this. However, there is no evidence before me of what equipment the gym would contain that would justify a floor space of approximately 11.75m x 10.5m. Therefore, it has not been demonstrated that the size of the gym is reasonably required or necessary. The design of an incidental building should be determined by the floorspace that is genuinely required to fulfil its purpose.
10. With regard to the smaller building, this would contain a cinema room, a games room measuring and two smaller rooms, which would be used as an office and a workshop/storage room. I acknowledge the limited living/lounge space the dwelling has for the appellant and their family. However, the floor space of the proposed cinema and games room would be significantly greater than that contained within the dwelling to the extent they would not be incidental to the dwelling; they themselves would likely become the primary living space. There is no evidence to indicate why the cinema room and games room rooms need to be so large to fulfil their purpose.
11. I find therefore, there is no clear justification for the buildings of the size proposed and for the purposes described. I am not satisfied that the buildings are genuinely and reasonably required or necessary to accommodate the proposed uses or activity, because a significant proportion of those uses would not be incidental.
12. As I have found that the proposed buildings would not be incidental to the enjoyment of the dwellinghouse, I therefore find the proposal fails to meet the

requirements of Class E of the GPDO and therefore would not be permitted development.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of alterations to the existing external elevations and associated internal works is 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.

A Walker

INSPECTOR