



Appeal Decision

Site visit made on 20 February 2024

by M Bale BA (Hons) MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2024

Appeal Ref: APP/M2270/X/23/3314750

17 Chester Avenue, Royal Tunbridge Wells, Kent TN2 4TZ

- 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.
 - The appeal is made by Ms Diana Kirkwood Norman against the decision of Tunbridge Wells Borough Council.
 - The application ref 22/03121/LAWPRO, dated 21 October 2022, was refused by notice dated 16 December 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 erection of an outbuilding to serve existing dwelling.
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Decision

1. The appeal is dismissed.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 as amended indicates that if, on an 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; and in any other case they shall refuse the application.
3. The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), Article 3, and Schedule 2, Part 1, Class E grants planning permission for the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. There is no dispute that the proposed building would be within the various size and siting limitations set out therein. Rather, the determinative issue in this case is whether it would be 'incidental' to the enjoyment of the dwellinghouse.
4. The building is described as being 'to serve the existing dwelling' and not as a separate dwelling or an annexe. While a decision should not be based upon assumptions about what might or might not happen within the building in the future, the onus of proof nevertheless lies with the appellant to demonstrate how the building would be put to uses incidental to the primary use of the dwellinghouse.
5. There is no definition of 'incidental' within the GPDO. However, the term implies that there should be a functional relationship between the uses carried out in the building and the primary use of the dwellinghouse, but that the

accommodation provided should not be integral to, or part and parcel of, the primary use.

6. 17 Chester Avenue is a single storey dwelling. At the time of my site visit, it was laid out to provide a kitchen, living/dining room, conservatory, music/second sitting room, one bedroom, and a bathroom. The plans indicate that the proposed building would provide a guest bedroom, bathroom, and home office. The floor plan also suggests that the building would include a music room, whereas a section drawing shows it would be a gym. This provides some ambiguity as to how the room would actually be used in order for me to determine that it would be used for an incidental purpose.
7. Nevertheless, even if the office, music room/gym would provide incidental accommodation, bedrooms are accommodation that would be expected as an integral part of the primary living space of a dwelling. They are part and parcel of the residential use and not incidental to it. On this basis, and with no reason to conclude otherwise, I find that, as the building would contain a bedroom, it cannot be said to be incidental to the enjoyment of the dwellinghouse as such.
8. For the above reasons, I find that the building as shown would not have had the benefit of the planning permission granted by the GPDO if it had been instituted or begun on the date that the application was made. It has not been shown that its construction would be lawful for any other reason. Therefore, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of an outbuilding to serve the existing 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.

M Bale

INSPECTOR