



Appeal Decision

Site visit made on 19 February 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 12 March 2024

Appeal Ref: APP/A0665/X/23/3330392

Acton Cliff Farm, Cliff Lane, Acton Bridge, Northwich CW8 2RZ

- 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 Mrs Tracey Hargraves against the decision of Cheshire West and Chester Council.
 - The application ref 22/04298/LDC, dated 17 November 2022, was refused by notice dated 24 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 a new stable in the garden.
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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. 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.
5. 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.

6. *Emin*¹ 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.
7. Paragraph E.4 of Class E states 'For the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of...pet animals...or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse'.
8. The horses stabled in the proposed building would not be used for working the land and therefore would not be considered livestock. Nevertheless, they would be pet animals for the personal enjoyment of the occupants of the dwellinghouse. Therefore, in principle, the stabling of horses is a use incidental to the enjoyment of the dwellinghouse. The question is then whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use.
9. The proposed building would have three loose boxes for stabling the horses, a tack store, a feed store, a rug room, a bedding store and a garden store. The three loose boxes would meet the minimum size guidance for stables advocated by the British Horse Society and DEFRA. The actual sizes of the stable loose boxes are not before me and although the two larger ones appear to exceed these minimum standards, they would not excessively so.
10. The garden store would be a large loose box. Nevertheless, the appeal property and its associated garden is substantial in size and therefore it is not unreasonable to consider there would be a need to store a large amount of gardening tools, equipment and general domestic paraphernalia for the maintenance and domestic enjoyment of the property.
11. With regard to the remaining four loose boxes, the keeping of horses, particularly for riding, typically involves the use of horse rugs, riding tack, feed and bedding. I am satisfied the evidence provided justifies the need for the size of these loose boxes.
12. Notwithstanding the acceptability of the size of the loose boxes, the covered central area would be larger than any of the loose boxes, covering a significantly large portion of the building. I acknowledge the needs of the appellant's daughter and the positive affect time spent with the horses would have on her health and well-being. However, the test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use. The proposed use in this instance is the stabling of the horses, and whilst the reason for stabling the horses may in part be due to the daughter's needs, that is not a use. I also note from the evidence before me, it is not just the daughter that has involvement with the

¹ *Emin v SSE & mid Sussex DC* [1989] JPL 909

horses. Moreover, it is argued the stables are required because the horses suffer from colic and laminitis.

13. Given the above, although the central area would provide cover, to the benefit of the daughter and the horses during inclement weather, due to its excessive size, I do not consider that it is genuinely and reasonably required or necessary in order to accommodate the stabling of the horses.
14. As I have found that the proposed building 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

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development 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