



Appeal Decision

Site visit made on 5 March 2024

by AJ Steen BA(Hons) DipTP MRTPI

an Inspector appointed by the Secretary of

State Decision date: 15 March 2024

Appeal Ref: APP/K2230/X/22/3301772

Cedarwood, Longfield Avenue, Gravesend DA3 7LA

- 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 Gary Horsfield against the decision of Gravesend Borough Council.
 - The application ref 20211587, dated 23 December 2021, was refused by notice dated 23 February 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 a single storey outbuilding.
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Decision

1. The appeal is dismissed.

Background and Main Issue

2. The appellant suggests that the proposed outbuilding would be lawful by reason of the planning permission granted under “permitted development” rights conferred by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). This enables the construction of buildings etc. incidental to the enjoyment of a dwellinghouse. I understand that the Council do not dispute that the building would fall within the limitations and conditions of the GPDO. I see no reason to disagree with their conclusions in this regard. Nevertheless, the Council suggest that, due to the size and proposed use of the building, it would not be incidental to the dwellinghouse as required by the GPDO.
3. Therefore, the main issue in this appeal is whether the Council’s decision to refuse to grant an LDC was well-founded, taking account of whether the use of the outbuilding would be incidental to the dwellinghouse.

Reasons

4. Where an LDC is sought the burden of proving relevant facts rests with the appellant and the test of the evidence is on the balance of probability. The evidence to support the application should be precise and unambiguous.
5. My attention has been drawn to the judgement in *Emin v SSE & Mid Sussex DC* [1989] JPL 909 that states an outbuilding must be required for some incidental purpose to be permitted development, but its size is not relevant. It is necessary to identify the purpose and incidental quality in relation to the

- enjoyment of the dwellinghouse and whether the building is genuinely and reasonably required to accommodate the use and achieve that purpose.
6. The appellant acknowledges that additional floor space is required by the occupants of the dwellinghouse. Their evidence indicates that the existing living room and kitchen are modest in size and indicate that multiple activities may not be tolerated in the same space in multi-adult households such as this.
 7. The proposal would comprise an outbuilding to the side of the house, replacing the existing double garage with storage and utility room to the rear. It is smaller than a previous proposal and would be located closer to the house than the existing in order to comply with the requirements of the GPDO that it should not be within 2m of the boundary of the curtilage of the dwellinghouse. The proposal would result in a significantly larger building than that it would replace. It would be substantial in comparison to the footprint of the existing dwellinghouse, especially taking into account another large outbuilding.
 8. The submitted drawings show that the proposed building would contain a garage, utility room, study/office and garden room/hobby space with WC. The appellant suggests the building would not provide cooking facilities but would provide space for cleaning items separate from the living accommodation in the house, such as boots, tools and car parts. I understand the piano may be moved from the hallway into the proposed garden room, along with the rattan furniture currently outside and, possibly, a table tennis table. Taking into account the building to be replaced, those uses may be incidental to the use of the dwellinghouse.
 9. I was able to view the other outbuilding during my site visit. That contains a large room containing games and gym equipment with a kitchen area, shower room and further room containing a sofa, that I understand is a sofa bed, TV, chairs and further gym equipment. I understand this building is used as guest accommodation and was also constructed under permitted development. In addition, there are two modest sheds to the rear of this outbuilding also within the garden.
 10. The Council suggest that the existing outbuilding, given its function in providing some guest accommodation, means it's use is not incidental use to the dwellinghouse. A previous LDC was granted relating to that building, that indicated use as an annexe or form of accommodation would not be incidental to the use of the dwellinghouse. They suggest the proposed building, excluding garage, would be large enough to provide independent living accommodation.
 11. My attention has also been drawn to other appeal decisions¹. Those decisions would have been made on the facts of the individual cases. I accept that bathroom and WC facilities could be provided in an outbuilding incidental to the dwelling and outbuildings can be divided into more than one space to cover a variety of functions. Indeed, I note the Council also accepted that with the other outbuilding at this property. It was found in the other cases that the uses proposed, including garden room, are often found in outbuildings. However, I need to consider the particular proposals in front of me.
 12. I consider that the building is of a size and layout that it could be used as primary, or independent, living accommodation. Taking account of the use of

¹ Appeal references APP/R5510/X/17/3167037, APP/3620/X/20/3248194, APP/Z0116/X/21/3286661 and APP/X/A5270/X/21/3267966

the other outbuilding and the evidence of occupation of the dwellinghouse, I consider that this would be likely in this case. As such, on the balance of probability I conclude that the use of the outbuilding would not be incidental to the dwellinghouse.

Conclusion

13. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of a single storey outbuilding 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).

AJ Steen

INSPECTOR

