



Appeal Decision

Site visit made on 3 September 2024

by D Hartley, BA (Hons), MTP, MBA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6th SEPTEMBER 2024

Appeal Ref: APP/V4250/X/24/3344944

20 Elmridge, Leigh, WN7 1HN

- 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 Benjamin Batrak against the decision of Wigan Metropolitan Borough Council.
- The application ref A/24/96705/LUCP, dated 24 January 2024, was refused by notice dated 20 March 2024.
- 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 outbuilding for a purpose incidental to the enjoyment of the dwelling.

Decision

1. The appeal is dismissed.

Main Issue

2. An LDC is not a planning permission. Its purpose is to enable owners and others to ascertain whether specific operations or activities would be lawful. Therefore, for the avoidance of doubt, I make clear that the planning merits of the proposed outbuilding are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority. The Planning Practice Guidance states that in the case of applications for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a local planning authority to understand exactly what is involved.
3. The main issue is whether the Council's decision to refuse to grant an LDC was well founded with particular regard as to whether it has been demonstrated that the proposed outbuilding would be permitted development taking into account the provisions and restrictions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the Order).

Reasons

4. The proposed brick-built outbuilding would be rectangular in shape. It would be built on land which currently occupies a detached garage. In this regard, the proposal would include the demolition of the existing detached garage. The proposed outbuilding would measure about 10.30 metres x 7.19 metres and

would have a height to the eaves of 2.20 metres and a ridge height of 3.80 metres. It would include garage space for the parking of two cars and with a workbench positioned to the rear, as well as a separate garden/bin store and a garden room/gym.

5. There is no dispute between the main parties that the proposed outbuilding would be permitted development in terms of its position, size, and height. Indeed, it would not fall foul of any of the restrictions in E.1. (a) to (k) of Class E of the Order. Moreover, the appeal site does not fall within an area of outstanding natural beauty; the Broads; a National Park; or a World Heritage Site and hence the restriction imposed on development within these areas under E.2 (a) to (d) of Class E of the Order is of no relevance when considering this appeal.
6. The point of contention between the main parties relates to compliance with the permitted development wording of Class E of the Order itself which is '*the provision within the curtilage of the dwellinghouse of— (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure*'. The Council considers that there is a lack of evidence to justify that the building is required to be of the size proposed and hence it cannot be permitted development under Class E of the Order. The Council comment that the proposed outbuilding would have a larger footprint than the two storey dwellinghouse on the site, and, in the absence of reasonable evidence to justify its overall proposed size, it could be reconfigured to accommodate the proposed uses within a smaller footprint.
7. As part of the appeal, the appellant has sought to provide justification in terms of the required size of the three rooms within the proposed outbuilding and hence why, in terms of its overall size, it would be required for a purpose that is incidental to the enjoyment of the dwellinghouse on the land. Moreover, the proposed LDC application includes a plan showing the arrangement and position of rooms and including locations for gym equipment (treadmill, exercise bike, bench press and free weights), five refuse bins, the parking of two cars, and a workbench.
8. As part of the determination of this appeal, I have considered the legal judgement of *Emin v Secretary of State for Environment (SSE) and Mid Sussex District Council 1989*. In this legal judgement, the Court endorsed the approach of the SSE which was that the scale of activities was an important matter because there must be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling as such. In that context the physical size of a building could be a relevant consideration, in that it might represent some index of the nature and scale of the activities. The Court found that the use of a building could not rest solely on an unrestrained whim but connotes some sense of reasonableness in the circumstances of the case.
9. In my judgement, the proposed space for the parking of two cars is reasonable. While as a whole the double garage is slightly larger than would be required for the parking of two vehicles, it is also proposed to include a workbench to the rear and space would also be utilised for storing bicycles.
10. I find that use of the proposed building as a gym would, in principle, be an incidental use. However, and, noting that some reasonable space would be needed for users of the gym equipment to manoeuvre, I find that the plans

nonetheless show that there would be a lot of floorspace that would not reasonably be required for the provision of the proposed gym.

11. The appellant comments that *'the garden room does not show an exact arrangement of tools to be stored, but clearly provides space of a domestic mower, leaf blower/vacuum'*. In the context that a workbench is proposed to the rear of the garage space, the evidence does not adequately justify why such space could not also be used for the storage of tools either within space beneath the workbench, or perhaps on shelving.
12. I note that double doors are proposed to the rear of the double garage. The evidence is silent in terms of why these doors are required in the context that two separate doors would facilitate access into the proposed double garage. In other words, in the absence of any reasonable justification as to why such doors are needed, I find that there is also potential for increased/useable internal floor/wall space to be provided within the proposed double garage. In any event, based on the appellant's proposed plans and accompanying evidence, I do not find that the appellant has provided me with sufficient precision and clarity to conclude that the proposed double garage could not be reasonably utilised for the storage of all tools, bicycles, and the mower and leaf blower/vacuum.
13. In reaching the above judgements, it is also noteworthy that the appellant has not actually specified the type, extent and size of tools that need to be stored within the building. This lack of precision and clarity is a matter that also casts doubt about whether all the floorspace shown for the proposed outbuilding would be required for a purpose that is incidental to the enjoyment of the dwellinghouse.
14. A proposed garden/bin store is proposed within the appeal building. This is a large room in the context of the evidence that is before me. The appellant states that the domestic mower and leaf blower/vacuum would be stored within the proposed garden room. I have dealt with such a proposal above. If in fact the appellant is referring to storing this in the proposed garden/bin store, the evidence is equally not persuasive in terms of demonstrating why such a domestic mower and leaf blower/vacuum could not be stored within the proposed double garage, in conjunction with use of a workbench and the storage of bicycles.
15. In the absence of reasonable evidence to the contrary, I do not see why the proposed double garage space could not reasonably be used to accommodate the storage of all the above domestic items. In this regard, I am not satisfied that the proposed garden/bin store is required to be of the size proposed. It is certainly not needed to be so large to accommodate the five refuse bins as shown on drawing No. DP-2326-LDC-03.
16. For the above reasons, I find that the evidence does not support the appellant's claim that the outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse. Therefore, it would not constitute permitted development under Class E of Part 1 of Schedule 2 of the Order. In reaching this conclusion, I have considered the appeal decisions referred to by the appellant. However, I have determined this appeal based on the evidence that is before me and exercising my own planning judgement. The appeal decisions do not alter or outweigh my overall conclusion below.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed outbuilding for a purpose incidental to the enjoyment of the 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.

D Hartley

INSPECTOR