



Appeal Decision

Site visit made on 23 July 2024

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 September 2024

Appeal Ref: APP/P0119/X/23/3332473

The Rosary, Chesley Hill, Siston, South Gloucestershire BS30 5NE

- 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 Mark Palmer against the decision of South Gloucestershire Council.
 - The application ref P23/02479/CLP, dated 25 August 2023, was refused by notice dated 20 October 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 to construct single storey storage building.
-

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr Mark Palmer against South Gloucestershire Council. That application is the subject of a separate decision.

Preliminary Matters

3. The description of the proposal as contained within the application form is as I set out above, "construct single storey storage building." However, the plans submitted show that the proposed building is not solely for storage purposes, but in addition to a garage and store (which is indicated to accommodate motorcycles), the building also includes a gym, music room, shower, home cinema, games room and WC. As such, notwithstanding the description, I have considered the appeal on the basis of the details shown on the plans.
4. At the time of my site visit, a building was present on the appeal site, and this largely accorded with the elevation and floor plan details that have been provided. Nonetheless, as I explain below, I have considered the appeal on the basis of a proposed development.

Background and Main Issue

5. A building currently exists at the appeal site. It appears from the information that is before me that the building was constructed following the grant of an LDC by the Council for the erection of a building containing a swimming pool. This specific building was not constructed but rather a building used as a dwellinghouse was instead erected. The Council served an enforcement notice

in respect of this building, which was then the subject of appeals¹. These appeals were dismissed, and the enforcement notice was upheld which required the removal of the building. The enforcement notice and the requirement to demolish the building remain extant.

6. The appellant seeks an LDC in regard to, despite a large degree of similarity to the existing building, a proposed building of the same design and layout for what is contended to be purposes incidental to the existing dwelling of The Rosary. If I were to allow this appeal and grant an LDC, the appellant indicates that they would be willing to demolish the existing building (as required by the extant enforcement notice) and rebuild a building in accordance with any approved details of the LDC, if that were necessary.
7. In light of the above, the main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. In this case that turns on whether the development falls within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

8. Class E, Part 1 of Schedule 2 of the GPDO permits the provision within the curtilage of a dwellinghouse of, amongst other things, any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. These buildings are permitted subject to certain conditions and limitations.
9. There is no dispute between the parties that the building in question meets all the conditions set out in paragraph E.1 of Class E and based on what is before me I have no reason to think otherwise. The Council's decision is based on its claim that the building would be of an unreasonable size when considered against the size of the existing dwellinghouse and as a result the use of it could not be considered to be incidental.
10. The dwelling at the appeal site is a not insignificant single storey building, set within large residential gardens. To the west are a number of separate buildings and the proposed building would be positioned to the eastern extremity of the site (as is the existing building).
11. The Planning Practice Guidance makes it clear that the applicant is responsible for submitting sufficient information to support an application. It goes on to state that in the case for a proposed development such as this, the applicant needs to describe the proposal with sufficient clarity and precision to enable the local planning authority to understand exactly what is proposed and what the development involves.
12. In support of the application the appellant set out their view on whether the building would be incidental, highlighting that the building is subservient to the main dwelling, in terms of its scale, the garden surrounding the proposed building and the dwelling remains one shared area, no kitchen or bedroom facilities are proposed to be included, with all cooking and sleeping to continue to take place within the main dwelling. There is also some explanation for the facilities that are to be provided within, in terms of the garaging of motorcycle and classic car collections, as well as the needs and wants of members of the

¹ APP/P0119/C/21/3286651 & 3286652

family in terms of a gym and games room. The cinema room is also intended as a space away from the main dwelling for the appellants children.

13. There is no statutory definition of "incidental" in the GPDO. Case law provides guidance on how decision-makers should interpret it. In the *Emin* case it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this 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 in order to accommodate the proposed use or activity and thus achieve that purpose.
14. Consideration of whether the proposed use of a building would be incidental is very much a matter of fact and degree based on the very specific circumstances of each case. The actual size of the building is a factor but should not be determinative. The relevance of size lies in the indication it may provide of the scale of proposed activities and whether they would be subordinate to the main use of the dwellinghouse. Case law confirms that 'required' for a purpose incidental to the enjoyment of the dwellinghouse as such, is to be interpreted as 'reasonably required' and should not rest on the unrestrained whim of a householder. The physical size of a building in comparison to the dwelling can be an important consideration but by itself is not conclusive. Regard should be had to the use to which it is proposed to put the building and to the nature and scale of that use.
15. While the proposed building is lesser in terms of floorspace than the existing dwelling, it remains substantial, thereby exhibiting little in terms of subservience. Individually, the facilities that are to be provided within are, in my view, normal activities that could be considered to be linked to the residential use of the dwelling and site. However, the space given over to each of the uses and the range of spaces/rooms, as well as the size of the building overall, appear to me to be overly generous and unusually large. There is little in the way of a detailed explanation as to why the actual floorspace that is proposed is reasonably required. Consequently, I cannot be satisfied that the building is one that is required for purposes that are incidental to the enjoyment of the host dwellinghouse.
16. Accordingly, I find that the proposed use of the building would not be incidental to that of the enjoyment of the dwellinghouse and thus does not fall within Schedule 2, Part 1, Class E of the GPDO.

Other Matters

17. The Council, within its Delegated Report, refers to there being uncertainty as to the intentions of future applicants. This is not a matter that should influence the consideration of the decision-maker. An application for an LDC such as this must be based on the information that is presented and it is not appropriate to "second guess" any future intentions. Thus, this matter has not influenced my decision.
18. I note the comments of the Inspector in the previous appeal decision on the site, in particular that an LDC would be unlikely to be granted in respect of a storage use of a building of the scale that is proposed. However, that comment was made in regard to a different appeal and in any event, as I have set out

above, there is not solely a storage use proposed. As such, this matter has little bearing on my decision.

19. I note reference by the Appellant to two examples of other proposed developments that have been considered by the Council and for which LDC's have been forthcoming, both of which appear to be substantial buildings. However, I do not have the full details of those cases, in particular I do not have any detailed rationale for the range and extent of facilities that were considered to be acceptable in those cases. As I set out above, consideration of whether the proposed use of a building would be incidental is very much a matter of fact and degree based on very specific circumstances. As such, notwithstanding that the Council granted certificates for the proposals, these examples do not dissuade me from my findings above.
20. I am conscious that the Council has previously issued an LDC for a building on the site which was of a comparable scale to that currently proposed. However, that building included different internal uses, which were considered to be incidental. Given the differences between that scheme and the one that is before me, this does not lead me to find differently to above.
21. There is reference to comments made by a representative of the Council during informal discussions in regard to the scale of the building. These however were outside of any application process and as such are non-binding on any formal decision that may be made.

Conclusion

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the construction of a single storey storage building 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).

Martin Allen

INSPECTOR