

Appeal Decision

Site visit made on 30 September 2024

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

an Inspector appointed by the Secretary of State

Decision date 30 October 2024

Appeal Ref: APP/A4710/X/24/3345316

39 Stanley Road, Halifax, HX1 3RX

- 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 Sultan Ali against the decision of Calderdale Metropolitan Borough Council.
 - The application ref 24/00303/192, dated 29 March 2024, was refused by notice dated 14 May 2024.
 - The application was made under 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.
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Decision

1. The appeal is dismissed.

Reasons

2. Section 192(2) of the Act states 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. 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.
4. 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 under Class E of Part 1 of Schedule 2 of the Town and Country Planning

(General Permitted Development) (England) Order 2015 (as amended) (the Order).

5. To benefit from Class E permitted development rights, it is necessary for the proposed outbuilding to be positioned '*within the curtilage of a dwellinghouse*' and be '*required for a purpose incidental to the enjoyment of the dwellinghouse as such*'. Following enforcement investigations, the Council question whether the property on the land has a lawful dwellinghouse use. Moreover, it questions if the land to which the outbuilding would be sited would be part of the curtilage of a dwellinghouse on the land. It states that an address is given for 'Royal Hire Limos' at the appeal site and that when officers attended there were ten vehicles located within the hard standing area to the rear.
6. The appellant claims that the appeal property on the land is a dwellinghouse and that Council tax has been paid. However, the appellant has not submitted any objective evidence to support such a claim. The onus is on the appellant to provide sufficient precision in terms of this matter.
7. It is conceivable that the land and/or property is lawfully being used as a mixed use comprising a mixed residential and limousine hire business use. In the absence of further clarity and precision from the appellant, it remains possible that either the land to which the outbuilding would be sited does not form part of a dwellinghouse curtilage, or that the appeal building is not a lawfully a dwellinghouse, but instead it is either a lawful limousine business use, or a mixed dwellinghouse and limousine business use. Consequently, the evidence lacks the necessary precision for me to conclude that the outbuilding would be permitted development under Class E of Part 1 of Schedule 2 of the Order. This is a matter which, in itself, justifies dismissing the appeal.
8. In addition to the above, to benefit from Class E permitted development rights, it is necessary for the LDC application to sufficiently demonstrate that the outbuilding would be '*required for a purpose incidental to the enjoyment of the dwellinghouse as such*'.
9. 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.
10. The proposed outbuilding, as shown on the submitted drawings, would have a footprint which would be like that of No. 39 Stanley Road. Other than the annotations '*garage*', '*gym*' and '*storage*', there is no further information from the appellant to demonstrate why the individual spaces within the proposed outbuilding would be required for alleged incidental dwellinghouse purposes. Even if it had be sufficiently demonstrated that the proposed outbuilding would be positioned within the curtilage of a dwellinghouse, further information and precision would be needed from the applicant to explain why

the storage area was required (including specifically what items would be stored), the extent and type of gym equipment that would be used, and the size and number of domestic vehicles that would need to be parked indoors. In considering this matter, I would have expected to have had information about how space within the existing property on the land was being used and/or was available.

11. Therefore, I do not find that the applicant has demonstrated that the outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse. This is therefore a further reason why I cannot conclude that the proposed outbuilding would be permitted development under Class E of Part 1 of Schedule 2 of the Order.

Conclusion

12. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of a proposed 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).

D Hartley

INSPECTOR