



Appeal Decision

Site visits made on 9 May 2024 and 4 June 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 03 October 2024

Appeal Ref: APP/N0410/X/23/3336140

Stoke Grange, Fir Tree Avenue, Stoke Poges, Buckinghamshire, SL2 4NN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the "Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Abid Hussain against the decision of Buckinghamshire Council.
 - The application ref PL/23/2731/SA, dated 14 August 2023, was refused by notice dated 23 October 2023.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is described as 'proposed construction of outbuilding to be used incidental to the main dwelling house'.
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Decision

1. The appeal is dismissed.

Costs

2. An application for costs was made by Mr Abid Hussain against Buckinghamshire Council. This application is the subject of a separate decision.

Preliminary Matter

3. I attended the appeal site on two separate occasions. At the first visit, I carried out observations from public viewpoints and, whilst I was able to see the appeal site, the appeal dwelling and its wider grounds were not visible. I therefore carried out a second visit to the site accompanied by the appellant and the Council. I was able to gain the information I needed to make a decision.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. This issue turns on whether the proposed development would be permitted development by virtue of the provisions of Article 3(1) and Class E of Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) ("the GPDO").

Reasons

5. An application under section 192(1)(b) of the Act seeks to establish whether any operations proposed to be carried out in, on, over or under land are lawful.
6. Section 192(2) of the Act states 'if...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'. Planning merits form no part of the assessment of a LDC application, which must be considered in light of the facts and the law.

7. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. At Part 1, it includes Class E(a), the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for the purpose incidental to the enjoyment of the dwellinghouse as such, subject to the prescribed limitations and conditions as set out within that class. There is no suggestion that the appeal scheme is contrary to the limitations set out in paragraphs E1, E2 and E3 of the GPDO and I see no reason to conclude otherwise.
8. In order to succeed in this appeal, the appellant must show, on the balance of probability that the proposed development would have constituted permitted development by virtue of the GPDO at the date of the LDC application, namely 14 August 2023 (the "Relevant Date"). As established in *Gabbitas V SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.
9. The Council's reason for refusal cites that by reason of the scale of the building, the proposed building was not considered to be incidental to the use and enjoyment of the main dwelling. However, following the Council's determination of the application and prior to the appellant lodging the appeal, an appeal decision¹ (the "2023 Appeal") concerning the host property was issued.
10. The 2023 Appeal was concerned with an enforcement notice² (EN) which alleged, without planning permission, an unauthorised change of use of land for the parking/storage of motor vehicles and the carrying out of operational development comprising the laying of hardstanding/ hardcore, the stationing of a cabin and the erection of close boarded fencing and gates to facilitate and integral to the unauthorised change of use. The EN was issued by the Council on 17 March 2022.
11. The Inspector carried out a site visit on 4 July 2023 and the appeal decision was issued on 26 October 2023. No appeal under ground (b) was made, which is that those matters (stated in the notice) have not occurred. The Inspector found under ground (c) that the land was not within the curtilage of the dwelling house and that planning permission was required for the alleged breach of planning control. The Inspector upheld the EN, subject to certain corrections and variations. There is no suggestion that the Inspector's decision has been challenged through the courts.
12. From my consideration of the plans and on the basis of the comments provided by the parties there appears to be no dispute that the appeal site forms a large part of the land which was enforced against in the 2023 Appeal.
13. In light of the 2023 appeal decision, the Council, as part of their statement of case, advised that they considered the proposed outbuilding would be sited on

¹ Appeal Decision: APP/N0410/C/22/3298939

² ES/22/00127/COU/EN/1

land outside of the curtilage of the main dwellinghouse and thus it would not be development permitted by the provisions of Class E.

14. The appellant asserts that the issue of 'curtilage' should be disregarded given that it did not form part of the Council's original reason for refusal. However, section 195(2)(a) sets out the approach to be taken is whether the authority's 'refusal' is well-founded, meaning the Council's decision and not the reasons for the decision. As such, if the evidence taken as a whole suggests that the matter in question is not lawful, it would be wrong to grant a LDC even if the Council had different reasons for reaching the same conclusion.
15. Article 3(5) of the GPDO states that the permission granted by Schedule 2 does not apply if (a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful; (b) in the case of permission granted in connection with an existing use, that use is unlawful. I wrote to the parties regarding the appeal decision and asked them to consider the application of Article 3(5) of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(the GPDO).
16. The appellant states that all the requirements of the EN have been complied with and there are therefore no unlawful uses on the land. The appellant goes on to explain that the unauthorised use for storage of motor vehicles had ceased many months previously (prior to the Council's appeal statement) (but) following the dismissed enforcement appeal. However, I must consider the lawfulness of the proposal on the date of the LDC application, 14 August 2023, which was prior to the issue of the appeal decision, 26 October 2023.
17. As concluded by the previous Inspector, the land (within which it is proposed to locate the outbuilding) was not within the curtilage of the dwellinghouse. Although the previous Inspector's site visit was carried out some time before the appeal decision was issued, by the appellant's own admission, the unauthorised use ceased after the Inspector's decision was issued, which was after the date of the LDC application. On the date of the LDC application, therefore, the land was not within the curtilage of the dwellinghouse. Moreover, the development would have been precluded by Article 3(5) because the use of the land was unlawful.
18. Since the property did not benefit from permitted development rights at the date the application was submitted, it is not necessary for me to consider whether the proposed building would have been reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
19. Thus, for the reasons given above, I conclude that the appeal scheme is development for which planning permission is required.

Conclusion

20. For the reasons given above I conclude that the Council's refusal to grant an LDC in respect of an outbuilding to be used incidental to the main dwelling house was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the Act.

E Brownless - INSPECTOR