



Appeal Decision

Site visit made on 7 October 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 October 2024

Appeal Ref: APP/A0665/X/23/3331622

Whitley Edge, Village Lane, Whitley, Northwich, Cheshire West and Chester WA4 4EJ

- 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 Barrie Newcombe Limited against the decision of Cheshire West and Chester Council.
 - The application ref 23/01439/LDC, dated 28 April 2023, was refused by notice dated 18 July 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 an ancillary building within curtilage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. The description of the development as set out in the LDC application form is 'ancillary building within curtilage'. Whilst the terms 'ancillary' and 'incidental' are often used interchangeably, they are distinctly different. An incidental use is one which is functionally related to the primary use. By definition, an incidental use cannot be one that is integral to or part and parcel of the primary use. An ancillary building is typically used as an extension of the primary use. For example, an outbuilding within the same planning unit as the dwellinghouse in use for the provision of additional living space.
3. Therefore, I have determined the appeal on the basis that an LDC is sought for a building required for purposes incidental to the dwellinghouse, not an ancillary building. This is clearly the basis on which the appellant makes their case and on which the Council determined the application.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

5. There is no dispute between the parties that the proposed building would meet the conditions and limitations set out in paragraph E.1, Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). The matters in dispute between the

parties are whether the proposed outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse.

6. Permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse. The functional relationship with the primary use should be one that is normally found and not based on the personal choice of the user. Whether a building is required for an incidental purpose will depend on a fact and degree assessment.
7. *Emin v SSE & mid Sussex DC* [1989] JPL 909 established that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.
8. It is a requirement of paragraph E.(a), Class E of the GPDO that the proposed development should be "required for a purpose incidental to the enjoyment of the dwellinghouse as such". The word "required" should be interpreted as genuinely and reasonably required or necessary in order to accommodate the proposed use or activity. The burden of proof in such matters is upon the appellant to show that the proposal is genuinely and reasonably required.
9. The footprint of the proposed building would be larger than that of the extended dwellinghouse. However, size alone is not decisive. In assessing whether the building is genuinely and reasonably required for incidental purposes it is necessary to apply objective reasonableness in consideration of all the relevant facts and circumstances.
10. A gym, play room, sauna, art studio, garden store, snooker room and cinema room could all be considered incidental uses to the enjoyment of the dwellinghouse. The appellant contends the proportion of the building for each of the uses is entirely proportionate. However, there is no evidence presented to justify why the proposed rooms are the size they are other than gym and cinema equipment and a snooker table depicted on the drawings.
11. Based on the drawings, the gym equipment indicates the size of the room would be reasonable to accommodate a home gym. Nevertheless, the cinema room has a significant amount of open space around the seating areas. Similarly, the snooker room appears to have significantly more floor space than what would generally be required to accommodate a snooker table, especially in the top left corner of the room by the door. In addition, both the art studio and the play room are very large rooms. There is no evidence to indicate what they would contain or why they need to be such a size. Furthermore, the sauna also appears to be large, more akin to one of a commercial rather than domestic nature. Moreover, the central lobby takes up a large portion of the floorspace, appearing excessively wide in parts. Therefore, it has not been demonstrated that the size of these rooms is reasonably required or necessary to fulfil their purpose.

12. I note the Council's comments on the proposed construction method of the building and the contention that buildings for incidental purposes are usually built to a lower standard. However, there is nothing within Class E that states how the building should be constructed. Accordingly, the quality of the construction of the building has had no bearing on my consideration of whether it would be lawful.
13. I find therefore, there is no clear justification for the building of the size proposed and for the purposes described. Consequently, I am not satisfied that the building is genuinely and reasonably required or necessary to accommodate the proposed uses. As such, it would not be incidental to the enjoyment of the dwellinghouse and would fail to meet the requirements of Class E of the GPDO and therefore would not be permitted development.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the ancillary building within the curtilage is 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.

A Walker

INSPECTOR