



Appeal Decision

Site visit made on 22 October 2024

by Andrew McGlone BSc MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 November 2024

Appeal Ref: APP/V4250/X/24/3338397

20 Elmridge, Leigh, Wigan 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/23/96449/LUCP, dated 24 November 2023, was refused by notice dated 19 January 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.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. In an appeal under s195 of the Act against the refusal of a LDC, the planning merits of the matter applied for do not fall to be considered. My decision is based strictly on the evidential facts and on relevant planning law even though there has been a recent appeal decision (Ref: APP/V4250/X/24/3344944) on an application made under section 192(1)(b) of the Act for a 'proposed outbuilding for a purpose incidental to the enjoyment of the dwelling' at the appeal site.
3. While I have determined an appeal¹ under s78 of the Act at the same time as I have considered this LDC appeal, I have dealt with each appeal separately.

Main Issue

4. I consider that the main issue is whether the Council's decision to refuse an LDC was well-founded.

Reasons

5. An application under s192(1) of the Act seeks to establish whether any use or operations proposed to be carried out in, on, over, or under land would be lawful. In an application for a LDC, the onus is on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.
6. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO") grants planning permission for the classes of development described as permitted development (PD) in Schedule 2 of the GPDO. Part 1 of Schedule 2 relates to development within the curtilage of a dwellinghouse. Class E of Part 1 describes buildings, etc. incidental to the enjoyment of a dwellinghouse.

¹ Appeal Ref: APP/V4250/W/24/3346318

7. Class E of the GPDO permits the provision within the curtilage of the dwellinghouse of 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.
8. As the proposed outbuilding would not contravene the restrictions in E.1. (a) to (k) and E.2 (a) to (d), the parties dispute relates to whether the proposed outbuilding is 'required' for a purpose 'incidental' to the enjoyment of the dwellinghouse having regard to its size, scale, and intended use.
9. The submitted plans show the arrangement of the proposed outbuilding. A three-berth garage would be in the front part of the outbuilding, with a garden room/gym to the rear. The appellant states that the proposed outbuilding would accommodate a new garage for the storage of cars and bikes with a workbench for home DIY and car repair tools, space to store the 5 refuse and recycling bins, a gym to accommodate a treadmill, static bike, bench press, and free weights, and a garden room to house a home office. The appellant says that these uses cannot be accommodated within the existing dwelling.
10. That may be true, but I have considered the judgement of *Emin v Secretary of State for Environment* ("SSE") and *Mid Sussex District Council* 1989. Here, 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.
11. The space labelled as a garage is larger than I would expect to park 3 vehicles, but the appellant also states that the garage would be used to store bikes, house a workbench, car repair tools, and the refuse and recycling bins. While these uses would, in principle, be incidental to the enjoyment of the dwellinghouse, the appellant has not specified the type, extent, and size of tools that need to be stored within the building or the size of the workbench. The lack of precision and clarity within the appellant's evidence places doubt on whether all the garage's floorspace would be required for a purpose that is incidental to the enjoyment of the dwellinghouse.
12. Using the proposed outbuilding as a gym and a home office could, in principle, be incidental uses. There are, however, no precise details of how the garden room/gym, which is of a considerable size, would be arranged in respect of both uses. The gym would accommodate a treadmill, static bike, bench press, and free weights, but in my judgment, the size of this equipment, along with a reasonable amount of circulation space, would mean that there would be a lot of floorspace that would not be reasonably required for the proposed gym part of the outbuilding. Furthermore, a home office typically occupies a modest floorspace, and there are no details justifying otherwise. Jointly, the garden room/gym would be of considerable size, and it has not been demonstrated that either reasonably requires that amount of floorspace for a purpose that is incidental to the enjoyment of the dwellinghouse.
13. Accordingly, I conclude that the evidence does not show that the proposed outbuilding would be required for a purpose incidental to the enjoyment of the

dwellinghouse. Hence, it would not be PD under Class E, Part 1 of Schedule 2 of the GPDO. I note the appellant's point about the property potentially not meeting the needs of the occupants and comparisons to the size of other properties in the area, but I have determined the appeal based on the submitted evidence, using my own planning judgement and on the facts of the case before me.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant an LDC in respect of proposed outbuilding for a purpose incidental to the enjoyment of the dwellinghouse 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).

Andrew McGlone

INSPECTOR