The Planning Inspectorate

Appeal Decision

Site visit made on 17 January 2020

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21 January 2020

Appeal Ref: APP/L3245/X/18/3217789
The Birches, Cross Road, Albrighton WV7 3BJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development.
- The appeal is made by Mr Phillip Broome (Nilsoft Ltd) against the decision of Shropshire Council.
- The application Ref 18/01496/CPL, dated 27 March 2018, was refused by notice dated 30 May 2018.
- 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 the building of a new leisure area, garages and garden room to serve the existing house on the land.

Decision

1. The appeal is dismissed.

Main Issue

2. A Lawful Development Certificate (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 development are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.

3. The main issue is whether the Council's decision to refuse to grant a LDC was well founded with particular regard as to whether it has been demonstrated that the development would be for a purpose incidental to the enjoyment of the dwellinghouse as such and hence permitted development by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

4. As part of the appeal, the appellant has provided me with both the approval notice and the plans relating to a lawful development certificate on the same site for the erection of a leisure building, garages and a garden room (Ref No 18/05707/CPL, dated 6 February 2019). This post dates the refusal of the LDC which is the subject of this appeal. The triple garage and the garden room are of the same dimensions as those which are the subject of this appeal, although

the garden room is closer to what is a smaller and internally different leisure building in relative terms.

5. I have no reason to disagree with the view already reached by the Council in respect of the triple garage building and the garden room. In respect of this appeal, and taking into account the evidence that is before me, I consider that as a matter of fact and degree, the triple garage and garden room would be required for a purpose incidental to the enjoyment of the dwellinghouse as such. Whilst the appellant does already have a double garage on the site, I note that he requires a secure building by which he can store trailers, to renovate microlight aircraft on a hobby basis and to house some garden equipment.

6. Whilst I find that the garden room and the triple garage would be permitted development, including compliance with the restrictions set out within paragraphs E.1 to E.3 of the Order, it is nonetheless necessary that the appeal development is considered as a whole. Whilst the proposed leisure building would also comply with the restrictions relating to position and size as outlined within paragraphs E.1. to E.3 of the Order, the point of contention between the main parties relates to whether the leisure building would be *"required for a purpose incidental to the enjoyment of the dwellinghouse as such"*: this would need to be satisfied for the proposal to be permitted development under Class E of the GPDO. If a building or enclosure is not required for a purpose that would be incidental to the enjoyment of a dwellinghouse, then it would fall outside the scope of the permitted development rights granted under Class E and planning permission would be required.

7. In respect of whether the proposed building would be required for an incidental dwellinghouse purpose, it is necessary to consider such a proposal in the particular context within which it would be situated: an outbuilding that may be considered incidental to the enjoyment of a substantial dwelling with many occupants and large grounds may not be incidental if situated in the garden of a small cottage with a single occupant. However, size alone is not necessarily a determining factor and a wide range of outbuildings for different purposes may be permitted under Class E, depending on the specific circumstances. Such principles have been established through the Courts with the term *"required"* being interpreted as meaning *"reasonably required".*

8. The leisure building would measure about 216 square metres. It would be a large building when considered against the existing dwellinghouse which I noted on my site visit was in the process of being extended. I acknowledge the health condition of the appellant's wife and hence the requirement to undertake more fitness and leisure activity at home. However, in considering whether the proposed leisure building is reasonably required the onus is on the appellant to make their case. As part of the appellant's justification (i.e. document entitled 'design and access statement') which lead to the approval of the aforementioned LDC development, including a leisure building which would be much smaller than the appeal leisure building, the appellant commented that such a building would *'allow Mrs Broome to independently enjoy life as much as possible within the restrictions of her disability'.*

9. Based on the evidence above, I am not satisfied that the leisure building as proposed is of a size which would be reasonably required. Furthermore, and, in any event, the evidence before me is not persuasive in terms of why there is

a reasonable requirement for two separate WCs, two separate changing room areas and a large internal entrance hall and circulation space. There is also very limited information before me which justifies why it is proposed to have both a *'gym'* and a separate *'workout area'* which collectively would amount to a sizeable amount of floor area. In addition, and accepting the health condition of Mrs Broome, there is nothing before me to indicate why the proposed 'pool side' area needs to be so large.

Conclusion

10. For the collective reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development was well-founded and that when the appeal development is considered as a whole it should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

11. In reaching the above conclusion, I am cognisant of the appellant's comment that they would like an *'opinion as to what is legally acceptable in this situation for the building to be compliant with permitted development rules'*. I have determined this appeal on the circumstances of the case. It is not incumbent upon me to provide advice on what other development may or may not be lawful and, in any event, each proposal needs to be considered on the basis of the circumstances that prevail at a particular time.

D Hartley

INSPECTOR