The Planning Inspectorate

Appeal Decision

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 02 October 2020

Appeal Ref: APP/L3245/X/20/3251865
The Birches, Cross Road, Albrighton WV7 3BJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Philip Broome against the decision of Shropshire Council.
- The application Ref 20/00899/CPL, dated 28 February 2020, was refused by notice dated 28 April 2020.
- The application was made under section 192(1)(b) of the 1990 Act as amended.
- The development for which a certificate of lawful use or development is sought is a single storey leisure area.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

4. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.

Main Issue

5. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

6. The appeal property is a relatively large, detached house with an existing detached outbuilding set within spacious grounds. The proposed leisure facility would be accommodated within a flat roofed building with a porch and entrance lobby. The floor plans indicate the layout would include a swimming pool, with an associated sitting area and changing rooms, and a gym/garden room also with access to separate rooms. The building would have a floor area 151.5 sqm and would be sited to the side and rear of the main house.

7. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse* is permitted development subject to conditions and limitations. The main dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.

8. E.4 says that for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse. The Technical Guidance[1] advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house. The Guidance continues, a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.

9. In addition, case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse as such, not to buildings required for a purpose integral to the use as a dwellinghouse. Whether this is the case will depend on a fact and degree assessment[2]. Incidental uses are not distinguished by scale, although that may be relevant.

10. The Court in *Emin*[3] confirmed 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.

[1] Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).
[2] *Pêche d'Or Investments v SSE* [1996] JPL 311; *Holding v FSS* [2004] JPL 1405.
[3] *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

11. I acknowledge that a home gym for the use of the occupants of the dwellinghouse, within an outbuilding, could be considered incidental to the enjoyment of the dwellinghouse. Also, I accept that a compact garden room, or summerhouse, can be incidental as a means of enjoying the garden in a position away from the main house. Such buildings can be sited to take advantage of a particular view, feature or sunlight. However, they tend to be low key or utilitarian style buildings. Crucially, they should not comprise primary accommodation and should remain subordinate.

12. In this case, the proposed home gym/garden room would occupy half the floor area of a relatively large building of substantial construction. The space, including the lobby, is large enough to accommodate multiple pieces of equipment, three cubicles including a WC, and a seating area. The swimming pool area would also include space for seating and two further separate cubicles, one of which would be relatively spacious. This level of accommodation appears to be a duplication in terms of the number of changing/toilet facilities and seating areas that would reasonably be required to serve the household.

13. It is indicated that the garden room would also be used for the purposes of entertaining, which goes beyond the more traditional use of a garden room as a space for the occupants to sit and relax away from the main house. This room would be in addition to the swimming pool area. Notwithstanding the multiple pieces of gym equipment shown on the plans, the garden room as proposed could have a function and purpose not unlike a reception room in a dwellinghouse. In my opinion, it would comprise additional primary living accommodation that would supplement the accommodation provided in the main house.

14. While it is not necessary for the appellant to demonstrate a requirement for the outbuilding, it must be shown to be required for a purpose incidental to the enjoyment of the dwellinghouse as such. Given the extent of primary accommodation that would be provided by the garden room in conjunction with the seating area alongside the swimming pool, a significant proportion of the building would be for purposes integral to the use as a dwellinghouse, as opposed to incidental uses.

15. I note that an LDC application for a leisure building, garages and a garden room was approved in 2019[4]. The approved development included a leisure area with pool (floor area 88sqm), and a garden room (floor area 64sqm). The works to implement the development have commenced.

16. The appellant argues that the lawfulness of the scheme before me should be presumed due to the Council's decision on the previous scheme. However, I consider the schemes to be materially different. The approved development comprises separate buildings, each with a specific function and purpose. The garden room would be relatively compact with a dual aspect and extensive glazing, which would enable users to fully appreciate the side and rear garden. The design is consistent with the stated function. The garden room/gym in the revised scheme includes a seating area and bifold doors, but a large proportion of the floorspace in this part of the building appears would be given over to a gym. This could be accommodated in the pool area where changing facilities would have a dual use. There is no explanation for this design.

[4] Ref 18/05707/CPL, 6 February 2019.

17. In addition, the aspect of the garden room in the scheme before me does not appear to take full advantage of the garden or the position of the sun. The appellant's reasons for placing these buildings together do not address these apparent anomalies.

18. Overall, there is no clear justification for an additional building of the size and layout proposed for the purposes described. I am not satisfied that the building is genuinely and reasonably required or necessary to accommodate the proposed use or activity, because a significant proportion of those uses would not be incidental. Furthermore, the use of the whole building would not be subordinate to the use of the house as a dwellinghouse but would be supplementary. In reaching this view, I have had regard to the personal circumstances of the appellant. While, I accept a need for facilities of the nature proposed, I am not persuaded that they need to be of the size and design shown to achieve their stated purpose. It has not been adequately demonstrated that a development of this scale and design is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

Conclusion

19. The totality of the evidence presented in support of the appellant's claim does not show that, on the balance of probability, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Accordingly, it would not be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

20. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single storey leisure area 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.

Debbie Moore

Inspector