



Appeal Decision

Site visit made on 5 May 2023

by D Hartley BA(Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18th MAY 2023

Appeal Ref: APP/H0738/X/22/3308164 7 Denevale, Yarm TS15 9SA

- 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 (LDC).
 - The appeal is made by Mr Adam Thompson against the decision of Stockton-on-Tees Borough Council.
 - The application Ref 22/1742/CPL, dated 4 August 2022, was refused by notice dated 29 September 2022.
 - The application was made under section 192(1)(a) 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 erection of an outbuilding incidental to the enjoyment of the dwellinghouse.
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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 outbuilding 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 the proposed outbuilding would be meet permitted development requirements as contained within Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Reasons

4. It is proposed to erect an outbuilding measuring 100 square metres to the south-east of No. 7 Denevale, Yarm which is a detached dwellinghouse built in the early 1980s. The position of the proposed outbuilding is illustrated in figure 3.1 of the statement prepared by ELG Planning (ELG Statement). Detailed plans of the proposed outbuilding are not submitted with the LDC application. In paragraph 3.6 of the ELG Statement it states that the intention is to use the outbuilding as a *'home office and gym'*.

5. However, it is clear from reading the local planning authority officer report that it considered a proposed outbuilding on the basis of it being used as a gym measuring 5m x 5m, office with storage measuring 6m x 4m, a storage area for garden equipment, children's toys, canoes and camping equipment measuring 7m x 4m, and the remaining space as a lobby for boots, coats etc accessing the three areas. I sought clarification from the main parties about what was specifically proposed for the outbuilding. Both parties agreed that it was as per the officer report. I have therefore considered the LDC application and appeal on this basis.
6. Class E (*buildings etc incidental to the enjoyment of a dwellinghouse*) of Part 1 of Schedule 2 of the GPDO states that the following is permitted development subject to meeting the limitations in E1, E2, E3 and E4: -
 - *The provision within the curtilage of the dwellinghouse of (a) 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; or (b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas'.*
7. There is no suggestion from either of the parties that the development would fall foul of the limitations in E1, E2, E3 and E4 of Class E. The points of contention relate to the words that I have underlined above, i.e., whether the outbuilding would be within the curtilage of the dwellinghouse and whether it would be required for a purpose incidental to the enjoyment of the dwellinghouse.
8. In respect of these matters, I have considered relevant case law. In respect of the latter issue, I have applied the judgment of *Emin v Secretary of State for the Environment* (1989) JPL 909 which, in summary, stated that for an outbuilding to be required for some incidental purpose it was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building would genuinely and reasonably be required to accommodate the use and thus achieve that purpose.

Curtilage

9. The extent of the curtilage of a building is a question of fact and degree considering relevant case law. Curtilage is not a use. Regard should be had to three tests of (i) physical layout of the building and the land or building said to be in the curtilage, (ii) ownership (past and present), and (iii) use or function (past and present) applied. It is enough that the curtilage serves the purpose of the house or building in some necessary or reasonably useful way, and it must be intimately associated with the building to support the conclusion that it forms part and parcel of the building.
10. The undisputed evidence is that the land to which the building would be positioned has always been owned by those that occupy the dwellinghouse. Aerial photographs show that until very recently the land where the outbuilding is proposed to be sited including mature trees. In my judgment, and despite land ownership, these trees were appreciated as being part of parcel of the wider woodland setting. Like the land to the north of the access, also in the ownership of the appellant, which includes trees, historically this land

represented a marked contrast between the more manicured lawns that exist around the dwellinghouse on the site.

11. The evidence is that for a significant number of years, the land to which the outbuilding is proposed to be sited included trees. However, I do accept that is not the case now. It is noted that the land has always been owned by those that occupy the dwellinghouse on the site. The appellant states that *'it is also worth noting that the grassed garden areas are contained, in parts, by rail and post fencing separating it from the remaining parts of the site that are covered by mature trees'*. While it is clear that trees on land where the outbuilding would be positioned have recently been cleared, the evidence is uncertain in terms of whether such trees were previously fenced off in any way from the dwellinghouse.
12. The onus is squarely on the appellant to satisfy me that the land is intimately associated with the dwellinghouse on the site and that it serves this property in a necessary and reasonable useful way. In this case, the latter has not been suitably demonstrated. It is noteworthy, albeit not in itself a determinative matter, that the appellant has himself acknowledged that there is a difference between the land to the north of the access adjoining the river (i.e., land shown in blue in figure 2.3 of the ELG Statement) and that to the south. He says that *'as the landscaping has matured over the years, not all the site has been subject to the day-to-day uses associated with the dwellinghouse in the same way that would occur within the curtilage. As such, the extent of the curtilage may well be considered to be smaller than the full extent of the original planning unit'*.
13. The appellant finds that the blue edged land that includes mature trees is not part of the curtilage, but that the land where the outbuilding would be positioned, which until very recently also included mature trees, is part of the curtilage. While the appeal land has recently changed, albeit that when the LDC application was made it did not have the same appearance as the more manicured lawns surrounding the appeal site, I do not consider that it would be reasonable to ignore the fact that, until very recently, the proposed outbuilding land included mature trees like the land to the north.
14. The appellant states that *'it has always been the case that the whole of the land owned by the property has been used for the enjoyment of the occupant of the dwelling on the site'*. However, this comment is not reasonably substantiated with specific and detailed evidence.
15. I find that up until very recently the land included trees which were more intimately associated with the wider woodland setting as opposed to being intimately associated with the dwellinghouse on the site. In other words, when the evidence is considered as whole, I do not find that the land in question forms part and parcel of the dwellinghouse on the site.
16. As a matter of fact and degree, and considering the history of the site (both past and present), I find that the appellant has not sufficiently demonstrated that from a use or function point of view the outbuilding land serves the house in a necessary or useful way. I conclude, for the above reasons, that the outbuilding would not therefore be positioned on land falling within the curtilage of the dwellinghouse and therefore it would not constitute permitted development under Class E of Part 1 of Schedule 2 of the GPDO.

Whether reasonably required to accommodate the use

17. The appellant proposes an outbuilding measuring 100 square metres for use as a home office, gym, storage area for domestic equipment and a lobby area. I do not have detailed plans in respect of the proposed outbuilding. However, the appellant has agreed that the dimensions of the proposed rooms are those as listed earlier in my decision.
18. The proposed use of the building is in principle capable of being incidental to the enjoyment of the dwellinghouse. However, it is necessary that I consider whether the outbuilding would genuinely and reasonably be required to accommodate the use. In respect of the office space, the appellant states that this is needed due to the confidential nature of the business that his partner is involved in. The evidence is that the existing house has a study, but I am persuaded that further office space would be 'required' in the outbuilding. However, the appellant does not provide sufficient explanation as to why the proposed office would need to be 6m x 4m or indeed what specific storage provision would be required.
19. In respect of the proposed gym, the appellant states that '*my wife and I both take part in online fitness classes which require a space. We don't find it terribly easy rolling out the Peloton bike and free weights into the kitchen so a space for a small gym would be essential*'. I do not doubt that current arrangements are inconvenient. The appellant claims a gym space of 5m x 5m would be '*small*', but again there is insufficient explanation as to why the proposed gym would need to be of the size proposed for the purposes of the use of free weights and a Peloton bike and/or on-line instruction.
20. In respect of use of the outbuilding for storage, it is noteworthy that there is an existing garage associated with the dwellinghouse. The appellant says that this cannot be used for storage as he wishes to use it to park vehicles. As part of my site visit, I was able to see inside the garage. At the time, it was being used for the parking of one vehicle and there were domestic storage facilities alongside the walls and bicycles hanging on the walls. I find that it would be possible to park vehicles in the garage while also storing domestic items such as toys, bicycles and some gardening equipment. While the appellant considers that there is a need for more space, he has not adequately demonstrated why a storage area of 7m x 4m would be reasonably required.
21. In addition to the above, the appellant states that the remaining space would be used as a lobby for boots, coats etc accessing the three areas. In this regard, I do not find that the building would genuinely and reasonably be required to accommodate this space and hence achieve an incidental purpose. There is nothing before me to demonstrate that space would not be available within the existing dwellinghouse to store boots and coats and the appellant has not provided sufficient clarity in terms of why 'lobby' space would specifically be needed in association with use of the outbuilding.
22. For the above reasons, I conclude that the evidence does not support the appellant's claim that the outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse. Therefore, it would not constitute permitted development under Class E of Part 1 of the Schedule 2 of the GPDO.

Conclusion

23. 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 erection of an outbuilding 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.

D Hartley

INSPECTOR