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# Appeal Decision

Site visit made on 7 November 2023

**by D Hartley BA(Hons) MTP MBA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 17<sup>TH</sup> NOVEMBER 2023**

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**Appeal Ref: APP/C3430/X/22/3305195**

**10 Rushford Avenue, Staffordshire, Wombourne WV5 0HZ**

- 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 Mrs Wakelam against the decision of South Staffordshire Council.
  - The application Ref 22/00486/LUP, dated 11 May 2022, was refused by notice dated 20 July 2022.
  - 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 single storey outbuilding containing garage and gym.
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## Decision

1. The appeal is dismissed.

## Main Issue

2. An 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 use 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 an LDC was well founded with particular regard as to whether or not it has been demonstrated that the proposed outbuilding would be permitted development taking into account the conditions and limitations of Class E (buildings etc incidental to the enjoyment of a dwellinghouse) of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

## Reasons

*Whether required for an incidental purpose*

4. Under Class E of the GPDO *'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'* is permitted development unless the proposal falls foul of the limitations in paragraphs E.1 to E.4.

5. 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.
6. The LDC building would measure about 54.7 square metres. It would include a garage measuring 5.7 metres by 5.1 metres and a home gym measuring 3.0 metres x 5.7 metres. The appellant states that the gym is required in connection with existing medical needs (as evidenced as part of the appeal) and that the garage would be required to store garden tools, equipment, bicycles, a car and a possible future classic car.
7. The local planning authority (LPA) claims that in overall size terms the proposed outbuilding is not reasonably required to accommodate the proposed uses. It states that there is already a single garage at the property that can accommodate the parking of a vehicle and that there is currently no classic car at the site. The LPA states that the full extent of the proposed garage space is not justified even accounting for the parking of the appellant's second owned vehicle and the storage of garden equipment, tools and bicycles. Furthermore, the LPA contends that the proposed space for the gym is large, and its full extent has not been sufficiently justified in terms of being required for existing medical or other needs.
8. As part of my site visit, I was able to see inside the existing attached garage on the appeal site. The rear of this building is in use as a living room. The front part of the building is a garage and includes stored domestic items within shelving units and other domestic items including a fridge and tumble dryer. While it would currently be difficult to use the garage for the parking of a vehicle, this would be possible if some of the domestic items were located elsewhere on the appeal site and/or stored at a higher level. Alternatively, the existing garage space would currently be capable of accommodating more garden equipment and bicycles should that be necessary. Given the currently available garage space, I agree with the appellant that the provision of further secure car parking for the other owned vehicles is reasonably required.
9. Notwithstanding the above, there is no certainty that the appellant would purchase a classic car in the future, and, in that regard, I do not find that at this time the full extent of the proposed garage space is genuinely and reasonably required. In other words, it is excessive in size. In reaching this view, I am also mindful that some gardening equipment/tools and/or bicycles could be stored in the existing garage. Indeed, the appellant has not fully and reasonably justified why and how much additional space is specifically needed for overspill storage purposes. Furthermore, it was evident from my site visit that there was a relatively large, detached outbuilding in the garden although the evidence before me is uncertain in terms of its use or indeed whether there is spare capacity within it to store domestic items and equipment.
10. I do not doubt the medical needs of the appellant. However, very little information has been provided by the appellant in terms of the type, number and size of gym equipment that is needed. Furthermore, there is an absence of information about use of the existing dwellinghouse and whether acceptable space is or is not available within the property to meet the appellant's

requirements. The appellant states that '*we do not feel that the space provided is excessive for such a need*' and '*the gym equipment shown is indicative only and not representative of our client's bespoke needs*'. However, the appellant has not provided specific details of bespoke needs, particular in terms of the type and amount of gym equipment needed and the space needed to reasonably accommodate such equipment. In the context of the above, I am not persuaded that the proposed gym is reasonably required in terms of its overall size.

11. For the above reasons, and, as a matter of fact and degree, I conclude that the evidence does not support the appellant's view that the proposed outbuilding is 'required' for a purpose incidental to the enjoyment of the dwellinghouse and hence it is not permitted development by virtue of Class E of Part 1 of Schedule 2 of the GPDO.

#### *Paragraphs E.1 to E.4 of Class E GPDO Limitations*

12. There is no dispute between the parties that the proposal does not fall foul of any of the limitations (including interpretation) contained within paragraphs E.1 to E.4 of Class E of the GPDO, apart from the proposed eaves height of the outbuilding.
13. Paragraph E.1 (f) states that development is not permitted if the '*height of the eaves of the building would exceed 2.5 metres*'. The submitted drawing includes a dimensioned annotation referring to a proposed eaves height of 2.3 metres. As part of the appeal, the appellant further clarified that the eaves height proposed would be 2.3 metres. On the evidence before me, it is not entirely clear why the LPA consider that the eaves height would be 2.6 metres. It is of course possible that the proposed eaves height would be 2.6 metres when the proposed outbuilding is scaled off.
14. Given my conclusion above, it has not been necessary for me to pursue this matter any further. Had this been the only concern, it would have been open to me to have sought further clarity about this issue including, as a possibility, and, if necessary, the provision of an amended drawing that when printed/scaled off was entirely consistent with the unambiguous proposed 2.3 metres eaves height dimension as shown on the submitted 'proposed floor plans and elevations' drawing.

#### **Conclusion**

15. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed single storey outbuilding containing garage and gym 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