
Appeal Decision

Site visit made on 24 October 2016

by Sukie Tamplin DipTP Pg Dip Arch Cons IHBC MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 17 November 2016

Appeal Ref: APP/R3650/X/16/3156274

Rockwood, Haslemere Road, Godalming, GU8 5PU

- 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 Rockwood Park Ltd against the decision of Waverley Borough Council.
- The application Ref WA/2016/1059, dated 16 May 2016, was refused by notice dated 15 July 2016.
- 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 development of an Outbuilding allowed under Class "E" Rights of the General Permitted Development Order 2016.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. Following the site visit I requested the views of the parties as to what constitutes the 'principal elevation' of Rockwood House. These views have been taken into consideration in my decision. Full size plans were also provided after the site visit.
2. An application for a Lawful Development Certificate (LDC) is determined on the basis of fact and law and considered against the appropriate legislation in force at the time the application was made. The onus of proof lies firmly on the appellant and to succeed the evidence submitted must be sufficiently precise and unambiguous.
3. In this case the appeal is considered against the provisions of the 2015 GPDO¹. Consideration of the planning merits of the proposed development is outside the scope of this appeal. Class E of Schedule 2, Part 1 of the GPDO sets out the circumstances in which buildings or enclosures within the curtilage of a dwelling house are permitted development. In particular Class E (a) is relevant to "any proposed outbuilding...required for a purpose incidental to the enjoyment of the dwelling house as such".
4. Development is not permitted if it exceeds the limitations, pertaining to size and location, of Schedule 2, Part 1, Class E, E.1.(a)-(j). From what I have seen on the plans and read in the statements it is common ground between the

¹ The Town and Country Planning (General Permitted Development) Order 2015. The appellant refers to the 2016 GPDO but that appears to be a typographical error as the GPDO was consolidated in 2015.

parties that these limitations are not breached. Notwithstanding this, for the reasons I give below, I dissent from the parties in relation to Part 1, Class E, E.1.(c).

5. The *Permitted Development for householders: Technical Guidance* (PDTG)² provides an interpretation of Part 1 of the GPDO. This says that a large range of common buildings such as garden sheds, other storage buildings and garages are allowed as long as they can be properly described as having a purpose incidental to the enjoyment of the dwelling house.

Reasons

Incidental use

6. In short the Council's reason for the refusal of the LDC is because it is considered that the overall scale of the outbuilding, which would have a floor space of approximately 816m² goes beyond what could be considered incidental to the enjoyment of the main dwelling, Rockwood. Relying on *Emin*³ the question to be addressed is "the nature of the activities to be carried on in the proposed building to ensure they are incidental or conducive to the very condition of living in the dwellinghouse". *Emin* continues "the fact that such a building has to be required for a purpose associated with the enjoyment of the a dwelling house cannot rest solely on the unrestrained whim of he who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case". Or in other words the word "required" in this context means that the building is genuinely and reasonably required for a purpose incidental to the dwellinghouse.
7. As pointed out by the appellant, *Emin* also says that when a matter is looked at as a whole, size may be an important consideration but is not by itself conclusive.
8. Rockwood is a very substantial house with a floorspace of about 1,400 sq m and 10 bedrooms and thus the outbuilding is, as a matter of fact, subordinate in scale. The uses to be accommodated are a 22-seat home cinema, a gym, a full size bowling alley, indoor shooting range and squash courts. By any measure the facilities are both wide ranging and extensive and yet there are no supporting facilities such as toilets, shower or changing facilities. Nor does it appear that there is a general seating area or any access to refreshment facilities. Whilst this is perhaps surprising it is not determinative. The proposed facilities are probably commensurate with those that would be provided at a luxury country-house hotel.
9. Notwithstanding this, the test in *Emin* is not whether it is 'reasonable' to have this extensive range of facilities but whether they are reasonably required as opposed to an 'unrestrained whim'.
10. At my site visit I was shown an existing part two-storey and part one-storey outbuilding, located some distance to the south-east of the house but within the blue line described as 'established domestic curtilage' on the Location Plan⁴ submitted as part of the application for the LDC. It appears that this structure

² *Permitted development for householders: Technical Guidance* Department for Communities and Local Government: Updated April 2016:

³ *Emin v SSE and Mid Sussex District Council* [1989] 58 P.& C.R 416

⁴ Location plan Ref 089 01

was built to provide leisure facilities for the main house and contains a swimming pool and various games rooms on two floors. The appellant says that this has planning permission for conversion to residential accommodation but from what I saw, this permission has not been implemented and the leisure facilities are still in place, albeit in need of refurbishment. Thus as a matter of fact, at the time the application was made for the LDC, there was a building providing a wide range of leisure facilities within the curtilage. Moreover, the main dwelling has a large cellar and it seems possible that this space, or perhaps another part of the spacious accommodation which is currently being refurbished, could be utilised to provide leisure facilities commensurate with a dwelling of this size.

11. Hence, considering all these factors together, specifically the extent, size and range of the proposed facilities, the availability of a substantial purpose built leisure building within the curtilage and the potential for utilizing space within the dwelling, I conclude that the proposal amounts to, in the language of *Emin*, an unrestrained whim. In these circumstances, the building and the facilities it would provide, as a matter of fact and degree, go beyond what is reasonably required, in the context of being incidental or conducive to the very condition of living in the dwellinghouse. In coming to this conclusion I have had regard to the appeal decisions relied upon by the appellant but have determined this appeal on its own facts.
12. However, even if I were to accept the appellant's view that the proposed facilities are no more than those which should be reasonably available to the occupiers of this large house, it is necessary also to consider the other limitations of Class E.

Principal elevation

13. Schedule 2, Part 1, Class E, E.1.(c) of the GPDO says that the development of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse is not permitted by Class E if "any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwelling house".
14. The PDTG says that the term "Principal elevation" will be, in most cases, that part of the house fronting the highway. It also says that it will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. It adds that usually, but not exclusively, the principal elevation will be what is understood to be the front of the house.
15. Rockwood House is a very large dwelling described in the submitted sales brochure as "an imposing country house set within mature grounds and parkland with wonderful long views". The house is sited well back from the public highway, the A286 Haslemere Road, and accessed via a private drive. Consequently it has no frontage to a main highway. In these circumstances planning judgment is required to determine what constitutes the principal elevation.
16. The driveway approaches the house from the north, this is described by the appellant as the most important elevation, and is characterised, he says, by its symmetry. Certainly it is likely to be the first elevation seen by visitors but it is informal in character and has a somewhat asymmetrical irregular composition.

17. This elevation has a central doorway within a stone arch or porch into the house. The appellant says that this 'front' door provides access into an entrance hall which in turns leads into the main reception room. But the floor plans show that this door provides access to a small lobby and from thence into a corridor with a door on the right hand side leading into the Great Hall and the main stairs and gallery. The corridor also has a door to the left and the floor plan shows that the ground floor rooms accessed from this point and located on the north-side of the house are primarily service accommodation, including toilets, the boiler room and a kitchen and utility room in a rear wing.
18. In sharp contrast the south elevation has a formal planned and symmetrical appearance, with its main bay windows, gables at either end and the whole unified by the imposing elevated terrace at first floor. All the main rooms are located on this side of the house and it has been designed to be seen as a cohesive architectural entity, located at the top of a slope commanding views over the parkland from which it is seen in turn as an arresting and imposing country house. Moreover the steps leading up to the house lead directly into the Great Hall with its galleried staircase. Hence visitors approaching or entering the house from the south immediately enter into the principal reception rooms rather than the small lobby followed by a corridor on the northern elevation. Hence whereas the north entrance is disproportionately small and out of scale with the house as a whole that to the south is entirely in scale and nature to this grand dwelling.
19. This finding is further supported by the submitted sales particulars which illustrate, on the cover of the brochure, the house in its setting viewed from the south. The second picture similarly illustrates this southern elevation as the eye-catching first impression. Whilst the content of the sales particulars are not determinative in themselves they do provide a 'man in the street' view of what the agents at that time considered its unique selling point and most important elevation to be.
20. Hence, returning to the meaning of the term 'principal elevation' in the PDTG, I find that the main architectural features of the house are on the southern elevation. This elevation has been designed and constructed as the 'front' of the house and the layout of the internal rooms and the Great Hall reinforces that view.
21. Consequently, the proposed outbuilding would stand forward of a wall forming the principal elevation and thus by reason of the limitation of Schedule 2 Part 1, Class E, E.1.(c) of the GPDO, the proposed development does not benefit from deemed consent granted by the development order.

Decision

22. 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 'Outbuilding allowed under Class "E" Rights of the General Permitted Development Order 2016' was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended and uphold that decision. Consequently the appeal is dismissed.

Sukie Tamplin

INSPECTOR