
Appeal Decision

Site visit made on 6 January 2017

by Chris Preston BA(Hons) BPI MRTPI

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

Decision date: 23 January 2017

Appeal Ref: APP/A1910/X/16/3158059

6 Highcroft Road, Felden, Hertfordshire HP3 0BU

- 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 Keith Pritchard against the decision of Dacorum Borough Council.
 - The application Ref 4/01364/16/LDP, dated 17 May 2016, was refused by notice dated 18 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 the construction of two detached outbuildings within the curtilage of the property.
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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 outbuildings 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

Reasons

4. Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (the Order) grants planning permission for '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'. Those 'permitted development rights' are subject to a number of conditions and restrictions, listed at paragraphs E.1 to E.3.
 5. The Council do not dispute that the proposed outbuildings would comply with the conditions and limitations listed at paragraphs E.1 to E.3 but dispute whether the proposed building would be 'incidental to the enjoyment of the dwellinghouse'. If a building or enclosure is not required for a purpose that
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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. The Council contend that the size, scale and extent of the facilities is excessive and would go beyond what would be 'required' for 'a purpose incidental to the enjoyment of the dwellinghouse'. In particular, they refer to the scale of the proposed cinema, which would have a cloak room and space for 10 people; the size of the gym; and the scale of the indoor bowling green which would accommodate two full size rinks.

6. I am satisfied that the proposal would comply with the restrictions set out within paragraphs E.1 to E.3 of the Order, having regard to size, footprint and location. However, the terms of paragraphs E.1 to E.3 are such that it is possible to design substantial outbuildings or means of enclosure to fit within the limitations, particularly where dwellings have generous gardens as is the case in this instance. It does not follow that a building or enclosure will be incidental to the enjoyment of a dwellinghouse purely because it meets the terms of paragraphs E.1 to E.3. Relatively small buildings may often fall outside the scope of Class E if they are not required for a purpose incidental to the enjoyment of the dwellinghouse and, vice versa, comparatively large buildings may constitute permitted development depending on the circumstances of any given case.
7. It is necessary to consider proposals in the particular context within which they 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. 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. Those principles have been established through the Courts, including the cases of *Emin*¹ and *Wallington*². The Courts have also established that the term 'required' should be interpreted as meaning 'reasonably required'.
8. Turning to the present case, two outbuildings are proposed, one of which would contain an indoor bowling green with two full sized rinks. The submitted plans show that the building would be 16.82m wide and 40.35m long, with an overall footprint in excess of 650m². The bowling green within the building would have an area of 640m². The adjacent building would house a gym, home cinema, film library and cloak room, with a width of 15.19m, a length of 22m and a footprint of 311.5m² according to the plans. By any measure, the scale of the buildings would be substantial and the structures would take up a large portion of what is a considerable rear garden.
9. At present, the associated dwelling is a modest property but I note that extensions could be undertaken under the permitted development regime, as shown in relation to a previous appeal³. The dwelling is currently vacant but the information before me indicates that the appellant and his wife intend to move into the house once refurbishment is complete. They would apparently be the only permanent occupants and the sheer scale of the facilities would appear to be way in excess of what could be considered reasonably required as an incidental use for a dwelling that would be occupied by two people.

¹ *Emin v SSE* [1989] JPL 909

² *Wallington v Secretary of State for Wales* (1991) 62 P. & C.R. 150

³ APP/A1910/X/15/3135676

10. The indoor bowling green would equate to the provision a full sized bowling rink per occupant. Similarly, the size of the indoor cinema which could accommodate at least ten people, with large areas of circulation space surrounding the viewing seats, could not reasonably be said to be for a purpose incidental to the enjoyment of a dwellinghouse that is occupied by two people. It seems to me that the gym is not unduly large, given the need to house and provide safe circulation space between pieces of equipment but that does not outweigh my concerns relating to the scale of the development as a whole.
11. I note that the appellant and his wife have a large family who would be likely to visit the property on a frequent basis. Friends may also visit. Therefore, the suggestion appears to be that larger facilities are required, than would otherwise be the case, on the basis that people who do not normally reside at the property would visit for the purpose of using those facilities. It seems to me that the rationale in that respect is based upon the need to accommodate those who reside elsewhere, and not necessarily the requirements of the occupants of the dwellinghouse itself. That adds to my concern that the scale of the proposed development goes beyond what is reasonably required for the enjoyment of the particular dwellinghouse in question.
12. Moreover, I have noted the description of development that was proposed in relation to the previous appeal. The Inspector in that case noted that four outbuildings were proposed, one of which was described as a "two lane bowling alley" with a size of 342.8m². The appellant at that time had suggested that the alley would be used for skittles as opposed to bowls. The bowling green proposed in the current application is almost twice the size of the bowling alley previously put forward. Whilst I am mindful of the difference between bowls and skittles, little information has been put forward to indicate why a much larger building is 'required' as part of the current proposal when no such facility was seemingly required when the previous application was made in the summer of 2015.
13. Government guidance in relation to development within Class E is provided in the publication *Permitted Development Rights for Householders - Technical Guidance (Department of Communities and Local Government, 2016) (the Technical Guidance)*. With regard to Class E, the Technical Guidance states:

'.....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 be described as having a purpose incidental to the enjoyment of the house. *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* (my emphasis in italics)'.

14. In other words, if the use of a space was fundamental to the ordinary day to day functioning of the dwelling it would not be incidental but part of the primary accommodation. Within his statutory declaration, Mr Pritchard suggests that the large viewing screen in the cinema room would be used in the evenings "almost every day" for the purpose of watching films and television, as an alternative to watching a smaller television in the lounge. To my mind, that suggests that the cinema room would, in effect, be used as an

extension to the primary accommodation, very much like an additional lounge, as opposed to an incidental use. As such, it would fall outside the scope of permitted development rights granted through Class E.

15. I have noted that toilet and shower facilities have been removed from the proposed buildings further to the decision of the previous Inspector who commented that such facilities would not be incidental. However, the Inspector noted that the presence of the facilities was "a point of relative detail when considering a scheme of this scale" and his decision to dismiss the appeal was clearly based on fundamental concerns regarding the scale of development proposed. In this case, the absence of toilet and shower facilities does not alter my view that the development would not be required for a purpose incidental to the enjoyment of the dwellinghouse.
16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development 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.

Chris Preston

INSPECTOR