
Appeal Decision

Site visit made on 24 January 2017

by Nigel Burrows BA MRTPI

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

Decision date: 9 February 2017

Appeal Ref: APP/V1505/X/16/3152058

'The Grange', Church Road, Ramsden Bellhouse, Billericay, Essex, CM11 1RT

- 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 J Collins against the decision of Basildon District Council.
 - The application Ref 15/01539/LDC, dated 4 December 2015, was refused by notice dated 11 February 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 described as 'Erection of free standing recreation/ancillary store building for the enjoyment of the dwellinghouse'.
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Decision

1. The appeal is dismissed.

Background

2. 'The Grange' is a modern detached house occupying an extensive plot to the rear of a frontage of housing on the east side of Church Road within Ramsden Bellhouse, near Billericay. The parties confirm that 'The Grange' is a replacement dwelling. A condition imposed on the planning permission for the property removed certain permitted development rights to enlarge the house. However, it is common ground between the parties that permitted development rights to erect outbuildings have not been removed.
3. According to the appellant, the current proposal is the second application for an LDC for a similar building. Apparently, the first application was refused because the building was sited forward of the principal elevation of the dwellinghouse. The submissions for the appellant appear to suggest that a related appeal was dismissed. However, there is no reference to this in the Council's summary of the relevant planning history.¹ In any event, the position of the building has been amended for the purposes of the current application.

Main Issue

4. The main issue in this appeal is whether the Council's decision to refuse the application for an LDC for the development described in the fifth bullet point above was well-founded.

Reasons

5. The proposal involves the erection of a single storey building in the northwest corner of the side garden of the property, just beyond a detached double garage. The application drawings indicate the building would be 12.0m wide by 7.0m deep. The ridge height of its

¹ Albeit the Council's summary does refer to the dismissal of an appeal arising from the Council's decision to refuse a planning application for a similar outbuilding

- shallow-pitched, hipped roof would be 4.0m. The external elevations of the building would be constructed in facing brickwork with contrasting brick courses and rendered quoins. The elevations would incorporate a number of domestic-style windows and doors.
6. The proposal involves the carrying out of building operations. As such, it constitutes development for the purposes of section 55 of the Town and Country Planning Act 1990. The building also requires planning permission by virtue of section 57. It is therefore necessary to consider whether planning permission would be granted for this building under the provisions of section 59 of the Act and Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015, which grants permission for certain classes of 'permitted' development (i.e. the GPDO).
 7. The main parties evidently consider that the proposed building should be assessed in relation to Class E, Part 1, Schedule 2 of the 2015 GPDO. I see no reason to disagree.
 8. Class E deals with the provision of the development described in sub-paragraphs (a) and (b) within the curtilage of a dwellinghouse. The paragraph most relevant to this appeal is (a) which states: "*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 ...*"²
 9. The appellant's stance is that the current proposal meets all the relevant limitations concerning its overall size and location, as set out within paragraphs E.1. (a) to (j) of Class E. Significantly, the Council has not suggested otherwise. There is no indication that the proposal would be subject to the limitations in paragraphs E.2 or E.3.
 10. Nonetheless, the Council's stance is that the building is not permitted development under Class E. The Council's refusal notice states, amongst other things, " ... *having regard to the details submitted and relevant case law, the proposed building exceeds what is reasonably required for purposes incidental to the enjoyment of the dwelling house as such ...*" .
 11. The grounds of appeal lodged on the appellant's behalf claim the building 'is required for domestic needs and personal enjoyment of the occupants of the dwelling house'. The submissions for the appellant also claim the size of the building is necessary for his needs.
 12. The appellant's statement of case provides some further amplification. The building is apparently intended for 'multi purpose uses' including 'private recreation' and 'ancillary private domestic storage'. The appellant intends to use it as a gym and snooker room in addition to 'other domestic uses and activities that arise from time to time'.³ It is suggested that each family member may have different recreational requirements. 'The Grange' is not considered large enough to accommodate facilities such as a gym and snooker room.
 13. The appellant's case is also predicated on the argument that whilst 'The Grange' occupies a large plot, no provision was made for a building to be used for the essential day-to-day maintenance of the buildings and land. The appellant considers it is essential to provide covered, secure storage facilities for gardening equipment, mowers, machinery and tools.
 14. The submissions suggest the two double garages adjoining the house are used for the family's cars. However, at the time of my visit they were used for the storage of domestic items. This could be argued to support the proposition that some additional storage facilities might be warranted. Nonetheless, the current proposal is troubling in a number of respects.
 15. As noted above, Class E of Part 1 of the GPDO authorises "*The provision within the curtilage of the dwellinghouse of ... any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...*" As the Council points out, the Courts have held that the word 'required' in this context should be interpreted to mean 'genuinely and reasonably required or

² Paragraph E.(b) is concerned with domestic oil tanks etc.

³ As indicated in the statement of case submitted on the appellant's behalf

- necessary in order to accommodate the proposed use or activity'.⁴ It is for the appellant to show this is the case, in addition to demonstrating compliance with the criteria of Class E.
16. The appellant proposes a substantial detached building of about 84m². However, it seems to me that the design of the building would not entirely reflect its purported use. For example, it is difficult to see how it could satisfactorily accommodate mowers and larger items of gardening equipment⁵, bearing in mind that the only access would be via personal doors.
 17. Turning to the internal layout of the building, the drawings indicate that it would mainly comprise a large open-plan area.⁶ I appreciate the building is intended for 'multi purpose uses' (which might imply that a flexible internal layout is required). However, even with this in mind, it is reasonable to assume that some internal subdivision might be needed - for example, to separate gardening equipment or storage from a gym and snooker room.
 18. It is difficult to escape the impression that the design brief for the building has focussed on the provision of a substantial structure to complement the style of 'The Grange', without any detailed consideration of how it will actually be used or how the uses will be arranged.
 19. As matters stand, the appellant has not provided any firm or compelling evidence to demonstrate that a building of this particular size and configuration is required to accommodate the activities and uses outlined in the application documents and appeal submissions. It is not obvious to me that, on the balance of probabilities, this building is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
 20. The Courts have held that the concept of '*enjoyment of the dwellinghouse as such*' embraces an element of reasonableness. I acknowledge the various activities described by the appellant could normally be regarded as incidental to the enjoyment of a dwellinghouse. However, the test must retain an element of objective reasonableness.
 21. In summary, on the evidence before me, I find the appellant has not adequately explained why a building of this size and configuration is reasonably required for purposes incidental to the enjoyment of 'The Grange' as a dwellinghouse. As a matter of fact and degree, I consider the proposal exceeds what could reasonably be said to represent development incidental to the enjoyment of the dwellinghouse. I therefore conclude that it would not be permitted under the provisions of Class E, Part 1 to Schedule 2 of the GPDO. It would not be permitted under any other part of the GPDO.
 22. It is well established in planning law that the onus rests with the appellant to make out his or her case. I find that burden has not been satisfactorily discharged in this particular instance. In the circumstances, I conclude the Council's refusal to grant a certificate of lawful development in this instance was well-founded. The appeal fails.
 23. I have taken into account all the other matters raised in the representations, but I find they do not alter or outweigh the main considerations that have led to my decision.

Nigel Burrows

INSPECTOR

⁴ The Council cites *Emin v Secretary of State for the Environment and Mid-Sussex DC* [1989] JPL 909

⁵ Especially if large motorised equipment is involved

⁶ Except for a small entrance lobby and toilet