
Appeal Decision

Site visit made on 21 March 2017

by Mr N P Freeman BA(Hons) DipTP MRTPI DMS

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

Decision date: 30 March 2017

Appeal Ref: APP/L3815/X/16/3155231

Newhouse Farm, Shillinglee Road, Shillinglee, Northchapel, GU8 4SZ

- 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 Dr & Mrs C Perrett against the decision of Chichester District Council.
 - The application Ref. PS/16/00562/PLD, dated 15 February 2016, was refused by notice dated 16 May 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 LDC is sought is the construction of a single storey outbuilding.
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Background

1. The proposed development is illustrated on Plan Nos. G01_D, G02_E and G03_F. Essentially the building would comprise a single storey range located on open ground to the south-east of the host dwelling within its domestic curtilage. The overall length of the principal axis would be about 42m with two projecting wings measuring about 13m and 15.5m long respectively.
2. Although I could not gain access to the house itself I was able to look through the ground floor windows and it is evidently uninhabited at present and in a state of disrepair with plaster stripped from the lower parts of the interior walls in most rooms. Adjacent to the house to the north-east is a linked barn measuring about 9m x 14m which also appears disused and contains a timber enclosure in the western corner which I understand used to house a wood burning boiler. The flue which served this is still evident projecting through the roof. There is another larger barn and some brick buildings to the east but although they are indicated as being within the appellants' ownership they are shown as being outside the domestic curtilage.
3. In terms of history, on the 10 December 2015 a LDC for a 2 storey extension (25m x 10m) on the western side of the house was issued by the Council. This has not yet been constructed although I observed that a section of trench has been dug and this is said to coincide with position of part of the proposed foundations of the extension. The LDC issued was for existing development with the Council finding that the trench digging that had taken place amounted to the implementation of the development.

4. There is also an earlier LDC issued by the Council on 22 October 2015 for two proposed single storey outbuildings. Essentially this was a more modest version of what forms the basis of the appeal proposal. The buildings in that case comprised a 3 bay garage (13m x 7m) and another (max dimensions about 10m x 22m) incorporating an indoor swimming pool, sauna, gym, changing area, toilet, shower and plant room. The present proposal would add a games room, studio, workshop and WC linking together the two respective buildings previously held to be lawful creating one single range.

Reasons

5. Both parties are in agreement that the issue to consider is whether the proposed development comes within the terms of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) which concerns buildings that are considered to be "*incidental to the enjoyment of a dwellinghouse*". Class E(a) is the relevant section in this case which allows for "*The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such*" subject to certain limitations (sections E.1, E.2 and E.3). There is agreement that the proposed development would satisfy all these limitations. The only issue that needs to be addressed therefore is whether what is proposed is incidental to the enjoyment of the dwellinghouse. The appellants say it is; the Council claim it is not.
6. There is no definition of what constitutes development that is "incidental" but case law has established some guiding principles which remain good authority in cases of this nature. Garages, games rooms, gyms, pool rooms and workshops, amongst other things, are capable of being types of use that are incidental to the enjoyment of a dwellinghouse. The court held in *Emin*¹ that, whilst physical size could be a relevant consideration it was not by itself necessarily conclusive and it was incorrect to say that proposed buildings could not be said to be required for a use reasonably incidental to the enjoyment of the dwelling as such because they would provide more accommodation for secondary activities than the dwelling provided for primary activities; this was not part of the test as to what buildings fell within Class E. Nevertheless, proposed buildings should remain ancillary and subordinate to the use of the main dwellinghouse and the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an owner or occupier². A hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These court cases and another³ indicate that the determination of each case is a matter of fact and degree based on the particular circumstances.
7. Turning to the facts in this case, the proposed building would according to the Council (not contested) have a floor area of around 373 sq.m. By any stretch of the imagination this is a large area of floorspace and greater than that found within many dwellings. Having regard to *Emin* and the other cases cited above I accept that this is not decisive but it is nevertheless an important material

¹ *Emin v SSE* [1989] JPL 909

² *Wallington v SoS for Wales* [1990] 62 P & CR 150; *Holding v FSS* [2004] JPL 1405; *Croydon LBC v Gladden* [1994] 1 PLR 30

³ *Pecche d'or Investments v SSE* [1996] JPL 311

consideration. In terms of comparisons, the appellants' agent argues that the assessment should be made on the basis of not just the house that presently exists but in terms of the house that would exist should the two storey extension that benefits from a LDC be constructed. Whilst the legality of building this extension is not questioned, I consider that the likelihood or otherwise of this being built has a bearing. Indeed the actual test is whether what is proposed is incidental to the enjoyment of the dwellinghouse and the only logical way to apply this test is to make the primary assessment against what is currently in existence. It may be that the two storey extension will be built at some point in time but it does not exist at present. Furthermore I have nothing from the appellants to indicate that its construction is imminent or indeed planned for in terms of an estimated timescale.

8. If this approach is followed the proposed building would be about 50% larger in floor area than the existing house which has a floorspace of approximately 250 sq.m. It would also have a footprint which appears to be in the region of 3 times that of the current house. My view is, having regard to these comparisons, that the proposal would not be subordinate or ancillary to the host dwelling but disproportionate both in terms of floorspace and footprint.
9. The agent has referred to the linked barn as being something that should also be factored into the equation on the basis that it can lawfully be used for ancillary domestic purposes. However, even allowing for the planning permission that has been granted to re-clad and enclose it, it will remain primarily a barn the most part of which is shown for general storage, the remainder as a boot room and a laundry. What presently exists is an open-sided building of rudimentary design, part of which contains an enclosure related to the former wood burning boiler. I do not consider it is directly comparable with the domestic accommodation within the main house or what is sought within the proposed building. Indeed the agent has stressed that both the existing barn and the proposed renovated structure would lack the necessary insulation required to provide day-to-day living accommodation. I therefore do not consider that it can be viewed as such whether in its existing or proposed form.
10. I have gone on to consider the position if the proposed 2 storey extension is included. According to the Council the total floorspace would then be about 650 sq.m. The proposed floorspace in the appeal building would add about 57% which again is a significant increase. Moreover, it appears that the footprint would also be greater than that of the house as extended. Even on this basis I do not consider that it would amount to a subordinate form of development. For all of these reasons I find that purely in terms of size the scale of the development would go beyond what could genuinely be seen as incidental to the enjoyment of the existing dwellinghouse.
11. As far as the proposed uses themselves are concerned there is then the question of whether they are genuinely those which are incidental to a dwellinghouse. The Council have already concluded in issuing the earlier LDC for the two separate buildings that the 3 bay garage, gym and swimming pool were and I have reason to dispute this. Such uses are indeed typical of what might be found in detached outbuildings serving host dwellings. As to the "new" uses, a games room is also something that can be viewed as a genuine ancillary use as can an office or a workshop. However, I consider that it is likely to be unusual that all of these elements would be desired in one building

and it is this particular circumstance which gives rise to such a large outbuilding which weighs against a finding that it is genuinely incidental having regard to the application of the test of objective reasonableness.

12. Another matter to which the Council refer is the question of need. Having regard to the above case law it is apparent that an unrestrained whim does not provide a sound basis for arguing the need for an outbuilding but I do not consider this means that an owner or occupier has to prove need for each and every element. In this case a reasonable explanation has been provided for what is desired and the purposes to which the rooms would be put.
13. I do however accept the Council's reservations about the purpose to which the studio or office would be put. The justification provided by Dr Perrett in his letter dated 26 July 2016 contains a number of points. Firstly that such an office needs to be separated from the main house. I see no reason why this is the case and no clear explanation has been provided. Secondly, that the land holding of 19 hectares used as a mixture of agricultural and equestrian pasture land requires a suitably sized farm office. This may be so but the acreage is not particularly large for a farm holding and I am not persuaded that this has to be in a separate building. Thirdly the office is needed ancillary to his work as a doctor which includes research and the running of a private company providing clinical support services to NHS Trusts throughout the UK. This is said to require considerable storage space for paperwork, including journals and books. Whilst having a modest office in one's home for business use may not amount to a material change of use the test here is whether it is required for purposes that are genuinely incidental to the enjoyment of the dwellinghouse as such. That is to serve a domestic or residential purpose. From the information provided I consider that this is at least questionable as its real purpose could have more to do with running a business.
14. The Council have also introduced another test of whether the uses proposed could be accommodated within either the premises that exists or as extended. I find no legal foundation for this and do not consider it has to be proven that the uses could not be so accommodated. Indeed if this were so it would lead to all kinds of speculation about how this might be achieved such as whether it was possible to squeeze a snooker table into a large lounge or an exercise bike into a study. As is clear from the relevant case law a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. I take this to include not expecting them to house desired uses within the existing dwelling if it is a preferable aspiration to incorporate them in a reasonable-sized outbuilding. I would however add one comment that I see no reason why the gardener's workshop and toilet could not be located within the linked barn. Indeed given what appears to be a surfeit of space within this building it would appear to be an ideal location and as plumbing is shown to be introduced to serve the proposed laundry room, the provision of a small WC for the gardener to use would be feasible.
15. Bringing these points together, I consider that applying a test of objective reasonableness the proposed building would be of disproportionate size compared to the existing dwelling and would not be subordinate to it. Whilst this is not necessarily decisive it is an important material consideration which weighs against finding the proposal lawful. Additionally I am not persuaded that the studio/office is genuinely required for a purpose incidental to the

enjoyment of the dwellinghouse. I have taken account of the fact that the Council have already found that part of the development would come within the terms of Class E of Part 1 of Schedule 2 of the GPDO but the present proposal would add about another 88 sq.m. in floorspace which I find is significant. In cases such as these it remains a matter of judgement but I consider that the present proposal would pass a "tipping point" and exceed what could reasonably be described as development that would be incidental to the enjoyment of the dwellinghouse.

16. In coming to my decision I have had regard to the various appeal decisions that have been supplied and commented on by the parties. Each of these was fact sensitive with the outcome dependent on the particular circumstances before the Inspector in question. I do not consider that anything would be gained by rehearsing the details of these cases not least because I do not have all the factual details before me. I have reached my decision based on an analysis of the facts that apply in this case having regard to the court authorities which should be considered to inform decision-makers. Nothing I have read in these other appeal decisions leads me to depart from the conclusion I have reached based on the representations and information before me.

Conclusion

17. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the proposal to construct a single storey outbuilding at Newhouse Farm, Shillinglee Road, Shillinglee, Northchapel, GU8 4SZ was well-founded and that the appeal should fail. Accordingly I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

Decision

18. The appeal is dismissed.

N P Freeman
INSPECTOR