

Appeal Decision

Site visit made on 13 March 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/J1915/X/16/3155140

Little Croft, Ermine Street, Colliers End, SG11 1EH

- 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 and Mrs A & K Borgia against the decision of East Hertfordshire District Council.
 - The application ref 3/16/1138/CLE, dated 16 May 2016, was refused by notice dated 12 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 development is sought is proposed outbuilding.
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Decision

1. The appeal is dismissed.

Reasons

2. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded.
 3. Little Croft is a detached four bedroom property situated in a spacious plot. The original dwelling-house's footprint is said to be somewhere in the region of 75 square metres; about 165 sq m taking account of permitted extensions. The LDC application relates to building operations comprising the erection of an outbuilding. It would have an 'L-shape' footprint. It would be 33 metres long by 7 m deep and 27 m x 7. It would be 3.8 m in overall height and eaves height would be 2.25 m; the structure would be set 2 m from any curtilage boundary. It would have a footprint of about 427 square metres. It would be located at the bottom of the garden. The outbuilding would be used as an office, a gymnasium, games room, home cinema and store rooms.
 4. Mr and Mrs Borgia seek a declaration that the proposed development would be lawful if instituted or begun at the time of the application. The case is a simple one, namely, that the development does not require express planning permission by virtue of permitted development ['PD'] rights set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO']. Deemed planning permission is granted by virtue of Article 3(1). Classes of development described as PD are set out in Schedule 2 to the GPDO. Amongst other things, Class E grants a planning permission for the provision within the curtilage of the dwelling-house of any building required for a purpose incidental to the enjoyment of the dwelling-house as such, subject to conditions and limitations.
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5. In order to comprise PD, all of the outbuilding must be within the curtilage and required for an incidental purpose; all of these words are important and constitute a basic criteria in Class E(a). Even if all of the physical parameters are met, failure to comply with basic criteria renders the development outside the scope of PD.
6. There is agreement that the outbuilding would fall within the curtilage and it would satisfy paragraphs E.1 to E.3. The Council argue that the size and scale of the proposed outbuilding cannot be reasonably considered as being incidental to the enjoyment of Little Croft. On behalf of Mr and Mrs Borgia, the planning agent vehemently disagrees and argues that the outbuilding would be used for incidental purposes. That the proposed size and scale would be required for the intended activities. The argument is that the Council has misdirected itself in applying the relevant tests when assessing the proposal against Class E.1(a). The submission is that once relevant principles of planning law are correctly applied to the facts and circumstances, a LDC should be granted. For all of reasons that follow I disagree with those submissions.
7. In Class E(a), what do the following words mean *...required for a purpose incidental to the enjoyment of the dwellinghouse as such*. The word 'incidental' describes something that occurs in connection with something else or is minor connoting subordination. Paragraph E.3 defines the keeping of domestic animals or pets for the domestic needs or personal enjoyment of the occupants of the dwellinghouse as an incidental purpose, but the GPDO does not actually define the meaning of Class E(a). It does not explain how Class E(a) must be applied in any particular circumstances. There is no statutory definition of the word incidental but case law provides authority for its interpretation¹.
8. A building 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. It is therefore reasonable and necessary to consider the building in the particular context within which it is or would be situated. Size alone is not necessarily a determining factor and a wide range of outbuildings for different purposes may be permitted depending on the particular circumstances. In *Emin* the Court confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwelling-house. Physical size of a building in comparison to the dwelling-house might be an important consideration, but was not by itself conclusive. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the building is genuinely and reasonably required or necessary in order to accommodate the use or activity and thus achieve that purpose. The word *required* should be interpreted to mean reasonably required. The words *as such* are also important. It is therefore reasonable to examine the justification as to the proposed building's size in relation to the intended purpose even where the physical tolerance is satisfied.
9. The test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier. But a hard objective test should not be imposed to frustrate the reasonable aspirations of an owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on particular circumstances.

¹ See *Emin v SSE* [1989] JPL 909, *Pêche d'Or Investments v SSE* [1996] JPL 311, *Rambridge v SSE & East Herts DC* QBD CO-593-96) and *Wallington v SSE & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942.

10. The argument is that the size and scale of any curtilage building is not defined in Class E. While there is no absolute limitation in percentage terms as to how small or large a building can be compared to the host dwelling, it must be demonstrated that what is proposed is genuinely and reasonably required for the intended purpose(s). Otherwise the GPDO would be open to abuse by proposals involving any size building meeting physical thresholds and being constructed for one stated purpose but then being used for another purpose.
11. In support of this LDC proposal the agent cites three other appeal decisions. He refers to these as examples where similar sized outbuildings have been allowed on the basis that they met Class E(a) criteria. The logical argument is that an LDC should be granted for this proposal. Inspector decisions are not Case Law nevertheless the findings and approach to a particular matter may be material. There is a need for consistency in the planning process but I am not bound to reach the same conclusions provided there are sound planning reasons for departing from their approach. Moreover, in the context of an LDC appeal, I must examine the factual evidence in a particular case about the history and planning status of the building or land in question, and the interpretation of any planning law or judicial authority. Although comparisons are made it should be borne in mind that I must evaluate the evidence presented in relation this particular proposal and site.
12. The following LDC decisions are cited as precedents. The Old Pump House, Marsh Lane Stanstead Abbots, allowed 24 August 2009 relates to an outbuilding incorporating a double garage, garden room and games room (162 sq m). The decision at 73 Downfield Road Hertford Heath, allowed 17 September 2010, relates to an outbuilding incorporating garaging, car port and office space (136 sq m). The outbuilding at 15 Channocks Lane Gilston, allowed 29 March 2016, would be a new triple garage, gym and games room². I have reviewed all of these decisions but the proposed development can be distinguished on its particular facts. None of these permitted outbuildings included a home cinema whereas the proposed outbuilding would have an eight-seater home entertainment room (about 7 m wide and 7 m deep); that is a material difference.
13. Turning to the proposed outbuilding, the contention is that the cinema room would be for leisure purposes. However, exact detail of the main dwelling's permanent occupants who are likely to use the facility has not been provided. Vague and incomplete evidence has been submitted to show that the existing dwelling cannot provide this type of facility for its occupants. I am not satisfied that a home cinema of this size is genuinely and reasonably required.
14. The proposed quadruple garage would include two 5 m wide entrances and it would be 7 m deep. There is an existing large garage adjacent to Little Croft. I give limited weight to the assertion that Mr and Mrs Borgia have many cars, as precise detail has not been provided. For example, it is unclear how many motor vehicles they would actually keep inside the quadruple garage. Given the absence of specific detail showing who actually is a permanent occupant of the dwelling-house, it is unclear whether other residents require parking space. In addition to that, there is no plausible explanation as to why such a large garage is required because there is an existing garage. I find that the size and scale of the proposed garage is not reasonably required.

² These appeal decisions against refusal of LDC made by East Hertfordshire DC have the same prefix digits at this appeal ending with 2088016, 2122330 and 3134681.

15. Comparison between the proposed garage and those permitted at Downfield Road and The Old Pump House does not really stand up to scrutiny. The former had a garage for five motor vehicles but exact circumstances have not been submitted. The latter included the demolition of an existing garage and its replacement with a double garage within the LDC application. This is not the case here.
16. The agent says that the outbuildings permitted at Channocks Lane and The Old Pump House contained store rooms for garden equipment. Decision-makers opined that the size of that space was required to maintain the garden, store tools, garden furniture and other domestic accoutrements. Be that as it may, the proposed outbuilding would have a separate tractor store with a 5 m wide entrance. I acknowledge the domestic curtilage to Little Croft is large, but the nature and type of ground maintenance plant and machinery likely to be kept within the tractor store is unclear. This is because specific evidence has not been provided. In addition, there is proposed a separate store room, which would be positioned between the garage and cinema room, but it is unclear as to why this is required. There is insufficient evidence to show that the existing dwelling has no space for storage of domestic paraphernalia.
17. The size of the leisure facility at The Old Pump House and Channocks Lane was much bigger. The gymnasium would be around 20 sq m yet the one permitted at Channocks Lane was 40 sq m. I have seen nothing to show the nature and scale of gym equipment that would be installed in the outbuilding at Little Croft, however. The games room is shown to accommodate a table-tennis and pool table. It is contended that both require space around them for players to either play the ball or to line up their cue, but the agent admits that the games room at Little Croft is larger in floor area than that at Channocks Lane. There is no explanation why this facility cannot be provided in the main dwelling. There is an added complexity. The submitted plans show a changing room, two separate toilets, a shower room and a room labelled 'C'. There is no explanation why there is a need for separate games room, gymnasium and changing rooms/facilities to serve the occupants of the main dwelling.
18. Mr and Mrs Borgia own and operate security alarm business. The home office, which would be about 9.8 m wide and 7 m deep, is intended for use in connection with the administration of that business. The Downfield Road outbuilding included an office that was around 10 sq m smaller than the one proposed at Little Croft and the inference drawn is that must be acceptable. However, a plausible explanation as to why such a large space is necessary has not been advanced. The amount and type of office equipment that would be installed. Given the number of people likely to utilise the space, it is unclear why such a large home office is required. Additionally, there is nothing showing why space in the main dwelling cannot be utilised as a home office. I do not consider that the size of the home office is modest and commensurate with an office use incidental to the residential use of the main building.
19. An argument may well be advanced that larger facilities of the type proposed at Little Croft are genuinely required on the basis that people who do not normally reside at the property would visit for the purpose of using those facilities. For instance, extended family members or friends. The rationale in that respect fails to appreciate the meaning and application of Class E(a), because it is based on the need to accommodate those who reside elsewhere and not necessarily the requirements of the occupants of the dwelling-house itself.

20. Drawing all of the above threads together, I find that ambiguous, weak and incomplete evidence has been submitted to substantiate the claim that an outbuilding of this size and scale is genuinely and reasonably required for the intended uses. My assessment of the information presented indicates that, in all likelihood, the space required for purpose of garaging motor vehicles, home office, gymnasium, home cinema, store and tractor store would be excessive. As a matter of fact and degree, a building of this size would not be reasonably required for its intended purposes. It would be on a scale that would not be incidental to the enjoyment of the dwelling-house as such. On the particular facts and circumstances of this case, the proposed outbuilding would not meet the necessary requirement of Class E(a).
21. The case for Mr and Mrs Borgia has been forcefully put and centres upon previous appeal decisions within the district. My analysis of the particular facts and principles referred to above is broadly consistent with the cited appeal decisions. On the particular circumstances of this case, however, I have come to a different decision.
22. For the reasons given above, having regard to all other matters, I conclude that the Council's refusal to grant a LDC in respect of proposed outbuilding 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.

A U Ghafoor

Inspector