
Appeal Decision

Site visit made on 30 March 2017

by Susan Wraith Dip URP MRTPI

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

Decision date: 02 May 2017

Appeal ref: APP/Y3615/X/16/3161033

Riverside Cottage, 38 Potters Lane, Send, Woking GU23 7AL

- The appeal is made under s195 of the Town and Country Planning Act 1990 [hereafter "the Act"] as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development [hereafter "LDC"].
 - The appeal is made by Ms H Ashfield against the decision of Guildford Borough Council.
 - The application no: 16/P/01701, dated 19 June 2016, was refused by notice dated 7 October 2016.
 - The application was made under s192(1)(b) of the Act.
 - The development for which an LDC is sought is: The erection of a single storey detached outbuilding in the rear garden for use as a garden room/artist's studio.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. The relevant date for this determination of lawfulness is the date of the LDC application, i.e. 19 June 2016. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful.
3. The Council's decision notice refers to the Town and Country Planning (General Permitted Development) Order 1995 whereas, at the time of the application, the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) [hereafter "GPDO"] was in force. It is this later document to which I shall refer for the purposes of deciding the appeal.
4. In an appeal under s195 of the Act against the refusal of an LDC the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the evidential facts and on relevant planning law. The burden of proof is upon the appellant.

Main issue

5. The Council's reason for refusal was that the building was not permitted development because it was not considered to be incidental to the enjoyment of the dwellinghouse. The main issue in this appeal is whether the decision to refuse the LDC was well founded.
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Reasons

6. The relevant provision within the GPDO is Class E to Part 1 of Schedule 2.¹ Class E provides for (amongst other things) the provision of any building within the curtilage of a dwellinghouse required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to a number of limitations.
7. It is common ground between the parties that the building would comply with the limitations set out in the Class E (listed in paragraphs E.1(a)- (j)). The main areas of contention are around whether or not the building is for purposes "incidental to the enjoyment of the dwellinghouse" and, additionally, whether it is "required" for such purposes such that it could fall within Class E in the first place.
8. Whilst not giving a full definition of what comprises an "incidental" building, paragraph E.4 of Class E indicates that purposes incidental to the enjoyment of the dwellinghouse includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house.
9. There is further guidance in "Permitted development rights for householders, Technical Guidance, Department of Communities and Local Government 2017" [hereafter "Technical Guidance"].² This document explains that, in addition to what is set out in paragraph E.4, there are a large range of other buildings on land surrounding a dwellinghouse to which Class E rights could apply. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the dwellinghouse. The Technical Guidance explains that a purpose incidental to a dwellinghouse would not, however, cover normal residential uses such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
10. I have been referred to caselaw³ in which it was held that the size of a building in relation to the existing dwelling is not in itself conclusive as its size needs to be considered alongside the issue of whether the building can be said to be required for some incidental purpose.
11. When taking into account the statutory provision, Technical Guidance and caselaw I consider that an "incidental purpose" would be one that arises as an incidence of the main domestic dwellinghouse use. A building used for an "incidental purpose" is not the same as a building used for ancillary purposes. The latter may include an element of primary accommodation (e.g bedroom, bathroom or kitchen) but Class E rights apply only to the former. A building to be used for a purpose which would, ordinarily, be part and parcel of the main dwellinghouse use (even if only in part) would not be an "incidental" building.

¹ Class E – buildings etc incidental to the enjoyment of a dwellinghouse.

² The Technical Guidance is a national document which gives advice on the interpretation of permitted development rights. At the time of the application an earlier version of the Technical Guidance applied. There is little material difference between the two versions insofar as the issues in this appeal are concerned. As a general rule, the Technical Guidance should be followed unless any different interpretation is given by the Courts.

³ *Emin v SSE* [1989]

12. The appeal building is comprised of two main parts. One part is described as a garden room and the other part is described as an artist's studio.
13. The garden room is intended as a multi-purpose space for use by the family for enjoying the garden, for entertaining family and friends, as play space for the appellant's children, as an area where the children can study and do homework, and as an area where the appellant can work in connection with the family business. It is intended a computer and printer would be installed.
14. Whilst it is contended that no primary living accommodation is proposed it is also said that the room will provide additional living space when the family wishes to use and enjoy the garden area; and that the room is required because the house is not large enough for entertaining family and friends, that there is no space available in the dwellinghouse for private play space and that a quiet study area is required, the family computer and printer currently being located in the kitchen.
15. It seems to me, on the evidence, that the requirement for the garden room arises (at least in part) out of an insufficiency of space within the main dwelling and that some of its intended purposes are more akin to those that are part and parcel of day to day family living (for example entertaining family and friends and undertaking homework) rather than those arising as an incidence of domestic living (for example hobby use). Additionally, use in connection with the family business (not associated with the domestic use of the dwelling) would not be a purpose incidental to the enjoyment of the dwellinghouse as such.
16. In terms of the artist's studio, I am told this is required by the appellant who is an artist. The appellant, at present, uses part of the kitchen area within the main dwelling for painting and the storage of art equipment.
17. I acknowledge that the building would provide a needed separate area, away from the main living activities within the dwelling, with space for easels and other equipment and good natural light. In principle such a building, in my view, could be an "incidental" building so long as its purpose is for the occupier's personal enjoyment (i.e. hobby use).
18. However, it is not clear from the evidence whether the use would be solely for the occupier's personal enjoyment or whether the use would include some wider purpose, for example relating to a business or group activity. I note it is intended, on occasions, that the studio would be used by the appellant and other local artists, painting together. This is suggestive of a use that is not entirely arising as an incidence of the domestic use of the dwelling.
19. On the question of whether the building is "required" for incidental purposes, the test is not solely what the occupier says is required. An element of objective reasonableness also has to be applied.
20. The appeal building is quite sizable when compared to the floorspace and footprint of the existing dwelling. Whilst size, in itself, is not determinate it is indicative (together with other factors) that the building might not be an incidental building in these circumstances.
21. The garden room is of a size sufficient to accommodate multiple uses some of which are more akin to primary residential use. However, I cannot be

sure, on the evidence, that a room of this size would be reasonably required if its uses were limited to solely those arising as an incidence of the domestic use of the dwelling.

22. The art studio is of sufficient size to accommodate other artists who would use it together. However, it has not been demonstrated that a studio of the size proposed is reasonably needed for, solely, incidental use for the personal enjoyment of the occupier.
23. As a matter of fact and degree it has not been shown that, at the time of the application, the proposed building would have been wholly used for purposes incidental to the enjoyment of the dwellinghouse. Neither has it been demonstrated that the building was reasonably required for such purposes. In these circumstances I cannot conclude that the proposed building would have been permitted development under Class E such that it would have qualified for an LDC.

Conclusion

24. For the reasons given above I conclude that the case for an LDC is not made out. I find that the Council's refusal to grant an LDC in respect of the erection of a single storey detached outbuilding in the rear garden for use as a garden room/artist's studio was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me under s195(3) of the Act.

Susan Wraith

INSPECTOR