
Appeal Decisions

Site visit made on 15 May 2017

by Diane Fleming BA (Hons) MRTPI

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

Decision date: 16 June 2017

Appeal Ref: APP/X0360/X/16/3164041 (Appeal A)

Constant Springs, Fleet Hill, Finchampstead, Wokingham RG40 4LA

- 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 W Shergill against the decision of Wokingham Borough Council.
 - The application, Ref 161208, dated 3 May 2016, was refused by notice dated 21 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 described as 'Erection of building as a purpose incidental to the enjoyment of the dwelling house'.
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Appeal Ref: APP/X0360/W/16/3164048 (Appeal B)

Constant Springs, Fleet Hill, Finchampstead, Wokingham RG40 4LA

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Mr and Mrs W Shergill against the decision of Wokingham Borough Council.
 - The application, Ref 150045, dated 19 June 2016, was refused by notice dated 29 September 2016.
 - The development proposed is described as 'Demolition of the existing dilapidated garage and workshop and the erection of a replacement detached garage with workshop'.
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is allowed and planning permission is granted for the demolition of the existing dilapidated garage and workshop and the erection of a replacement detached garage with workshop at Constant Springs, Fleet Hill, Finchampstead, Wokingham RG40 4LA in accordance with the terms of the application, Ref 150045, dated 19 June 2016, and the plans submitted with it, subject to the conditions set out in the attached schedule.
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Background

3. The appeals relate to a detached bungalow known as 'Constant Springs' which is situated in a large plot in a rural area. Planning permission was granted in January 2014 to erect a two storey dwelling, in a modern style, which would be sited behind the existing bungalow and work is well underway on this project. Condition 8 attached to that permission stated that the bungalow should be demolished within three months of the first occupation of the new dwelling. The appellants currently still occupy the bungalow.
4. There is an existing detached garage, with adjoining workshop and greenhouse, to the side and slightly to the rear of the bungalow. This building is in a poor state of repair with large cracks running down the walls. The appellants wish to replace this structure with a new garage, workshop and gym in a modern style but their application for planning permission was refused. This is now the subject of Appeal B.
5. They have subsequently submitted an application for a lawful development certificate (LDC) for a more traditional garage development on the site of the existing garage/workshop/greenhouse for three reasons: 1) To establish a fall-back position of what could be achieved on the site; 2) To provide a comparison for the modern garage development; and 3) To provide some certainty that a garage could be developed to replace the existing garage development. This application was also refused by the Council and is the subject of Appeal A.

Appeal A

Procedural Matters

6. The appellants point out that the LDC decision notice refers to section 191 of the Town and Country Planning Act 1990 (the 1990 Act) prior to setting out the reason for refusal in relation to their application, which was made under section 192 of the 1990 Act. The Council have acknowledged that this was a mistake. There is, though, another error which is within the reason for refusal as it refers to Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development)(England) Order 2105 (GPDO). In fact, the Council's officer report and Statement of Case show that the development was assessed against the provisions of Class E of the GPDO. I will therefore deal with the appeal on that basis.
7. Section 192(2) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. The appeal is confined to the narrow remit of reviewing the Council's decision as to whether it was well-founded or not well-founded. This is the decision itself, not the reasons for it.

Reasons

8. The proposed garage, described as traditional in appearance by the appellants, would be erected no further forward than the existing garage. It would be sited 2m away from the side boundary of the site and it would include an area for a gym at the rear. The building would have a pitched roof no higher than 4m but

the eaves height would vary. The plans show it would be 2.4m on the front elevation above the garage doors and 2.4m on the rear elevation for the roof over the gym element. However, as the gym element of the building would not extend across the full width of the rear of the garage and the ground falls away at the rear of the site, there would be a small section of roof at the rear of the garage that would have an eaves height greater than the maximum specified of 2.5m in paragraph E.1.(f) of Class E. This states development is not permitted by Class E if 'the height of the eaves of the building would exceed 2.5m'.

9. The Department for Communities and Local Government published 'Permitted development rights for householders, Technical Guidance' (TG) in April 2016, which was subsequently updated in 2017. This assists with the interpretation of the GPDO. It sets out (page 44) that 'Under Class E the maximum height of the eaves *on any part of the building* (my emphasis) is 2.5m'. The proposed development in terms of its eaves height for all of the building would therefore not accord with the limitation set out in paragraph (f) of Class E and as such would not be permitted development (PD).
10. The Council have taken the view that the development would not be lawful as the building would be sited on land forward of a wall forming the principal elevation of a dwelling. They submit that construction work is substantially complete on the new dwelling and as such a new chapter has begun in the planning history of the site which they state now has a new planning unit. They also refer to a number of cases¹ to support their position that the new garage development should be assessed in relation to the principal elevation of the new dwelling.
11. However, the starting point for the assessment of the development begins with the opening words of Class E 'The provision within the curtilage of *the* dwelling house of-'. The provisions of Class E only apply² where there is a curtilage with only one dwelling house. In this case the original dwelling house is still occupied at the front of the site and at the date of the Council's site visit in June 2016 progress on the erection of the new dwelling house was described as 'well underway' and in an 'advance stage of construction'. All floors and walls were in place and there was also a roof. The Council stated that the appellants were in the process of installing windows 'to make the building weathertight' which implies that at the date of the LDC application at the beginning of May 2016 the new dwelling was less advanced in terms of its construction. At the time of my site visit I saw that the windows had been fitted but there was no staircase, lighting or kitchen in place. It is my view therefore that the new dwelling was not substantially complete either at the date of the application or at my visit.
12. PD rights only apply to land within the curtilage of a dwelling house which in this case is considered to be the bungalow. It is then necessary to assess whether the proposed garage development would be sited within its curtilage. The term 'curtilage' must not be confused with the planning unit nor with a use of land. It is relevant only to section 55(2)(d) of the 1990 Act and to PD rights. To fall within the curtilage of a building it is enough that land serves the purpose of a building in some reasonable or useful manner.

¹ Prosser v Minister for Housing and Local Government [1968] 67 LGR 109, Petticoat Lane Rentals v SSE [1971] 22 P and CR 703, Newbury DC v SSE [1981] AC 578 and Pioneer Aggregates (UK Ltd) v SSE [1984] 2 ALL ER 358

² The Council have confirmed that permitted development rights were not removed when the bungalow was built.

13. The proposed garage development would be sited within the same footprint area as the existing garage, workshop and green house which is within close proximity to the side of the bungalow. This area of land and the area between the bungalow and road serve a useful purpose for parking and circulation space which I consider means it falls within the curtilage of the bungalow.
14. Moving on in terms of the assessment, development of outbuildings within the curtilage of the bungalow is PD provided various criteria are met relating to size and position. The parties are in agreement that the use of the proposed building would be incidental to the enjoyment of the bungalow. I note the Council query the provision of a gym as the new dwelling included plans for a basement gym but this has not been built due to the difficult wet ground conditions. The inclusion of a gym is therefore reasonable. Whilst the proposed garage development would be single storey, be sited behind the principal elevation of the bungalow and comply with most of the limitations of Class E, for the reasons I have already discussed it would not be PD due to the height of the eaves.
15. To summarise, whilst the proposed development would accord with the majority of the limitations set out in Class E of the GPDO, it would not comply with paragraph E.1.(f). Overall therefore the proposed garage development would not benefit from the PD set out in Schedule 2, Part 1, Class E of the GPDO.

Appeal B

Main issues

16. The main issue is the effect of the proposed development on the character and appearance of the rural area.

Reasons

17. The appeal property is situated in an attractive rural area outside of Finchampstead village. Fleet Hill, a narrow and busy road without footpaths, is largely bounded on both sides by mature hedges and trees in the vicinity of the appeal site which obscure views of the sporadic residential development along the road. Constant Springs is situated on the south side of the road within a generous sized plot and the land within the site falls gently away from the road. The width of the access into the site is modest and is positioned between two mature trees. The boundary between Constant Springs and the adjacent property, Finchampstead Coach House, which shares the same access point, is marked by a line of mature trees. Views of the existing property and garage are therefore restricted which is the case with much of the development in this verdant area.
18. The replacement garage building would be sited on the same concrete slab as the existing garage. The massing and scale of the development though would be different from the existing development which currently comprises three distinct blocks. These are the single garage with a hipped roof that is 4.4m high to the apex, the workshop at a lower level and the light-weight greenhouse structure sited behind a high brick wall. The composition of the existing development contributes to its modest appearance.
19. The new building would be more substantial and would be formed from just two blocks with a double garage to the front and a gym at the rear. As the

location would make use of the lower ground to the rear of the site, there would also be a workshop area over the gym with windows looking out over the slightly inclined, mono pitch garage roof which rises to 3.2m. The overall height of the gym/workshop would be 4.4m high and the overall impression would be of a one and half storey building with the workshop area appearing as a lightweight addition due to the expanse of glazing above the garage roof.

20. I consider the use of two shallow, mono pitch roofs for the building, the limited views through the narrow access point into the site and the screening provided by surrounding flora mean that the massing of the development would not be that noticeable. Any perceived visual harm would therefore be insignificant.
21. With regard to the scale of the building, this would be in proportion with the dwelling being built on site which the Council advise is much larger than the bungalow. At two storeys in height it has a horizontal emphasis and makes use of bold geometric shapes for accents. The design of the proposed garage would adopt the same approach. The low angle of the mono pitch roofs would minimise the height of the building and the projecting feature wall between the two garage spaces would add visual interest.
22. The Council are concerned that the overall size of the proposed development would unacceptably encroach on the appearance of the countryside. The change in massing would also add to the built form across the width of the site and the siting of the garage forward of the new dwelling would detract from its architectural quality. However, the fall-back position, which is very likely given the appellants have submitted a LDC application and appeal, is that the garage could be demolished, which I am told has severe structural defects, and a new garage could be erected behind the principal elevation of the new dwelling making use of PD rights. This would necessitate the laying of a substantial new drive using PD rights, which in my view, would result in more of an encroachment into the countryside than making use of the existing concrete slab. I therefore give the appellants' argument significant weight.
23. As to the additional built form across the width of the site, whilst it would be greater for the reasons already given, any harm would be insignificant. The proposed design of the new garage would sit comfortably with the new dwelling and its forward position would be no different from many other residential properties with outbuildings that sit in large grounds that I saw in the vicinity of the site.
24. For these reasons I conclude that the development would not result in harm to the character and appearance of the rural area and it would therefore accord with Policies CP3 and CP11 of the Council's Local Plan³. These require that development is of an appropriate scale and design that does not lead to excessive encroachment on the countryside, amongst other matters. I give these policies weight as they are consistent with the National Planning Policy Framework's requirement for good design.

Conditions

25. I have considered the four conditions suggested by the Council and the single condition suggested by the appellant, which relates to the protection of trees, against the advice in the Planning Practice Guidance. In addition to the

³ Wokingham Borough Local Development Framework, Adopted Core Strategy Development Plan Document January 2010

standard time limit on the commencement of development, a condition requiring that the development be carried out in accordance with the approved plans is imposed. This is for the avoidance of doubt and in the interest of proper planning. It is also necessary and reasonable to require the submission of details of the proposed external materials in the interests of the appearance of the development. A condition to require that the facilities provided are maintained for the benefit of the development is also both necessary and reasonable given the location of the building. In addition, as the appellants have pointed out, given the proximity of the development to the trees along the western boundary of the site, all of which are to be retained, it is necessary to require the submission of tree protection measures during the construction of the development.

Conclusions

Appeal A

26. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a building as a purpose incidental to the enjoyment of the dwelling house 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.

Appeal B

27. For the reasons given above I conclude that the appeal should be allowed.

D Fleming

INSPECTOR

Schedule of conditions for appeal ref APP/X0360/W/16/3164048

- 1) The development for which permission is hereby granted must be commenced no later than the expiration of three years beginning with the date of this permission.
- 2) The development hereby permitted shall be carried out in accordance with the following approved plans numbered 3016/12, 2947/01FP, 2947/02FP, 2947/03FP, 2947/04Fp and 2947/05FP.
- 3) Notwithstanding any description of materials within the application, no development shall take place until samples or full details of the materials to be used externally have been submitted to and approved in writing by the Local Planning Authority. Development shall be carried out in accordance with the approved details.
- 4) The garage building hereby permitted shall be kept available at all times for the parking of motor vehicles by the occupants of the dwelling and their visitors and for no other purpose.
- 5) No site clearance, preparatory work or development shall take place until a scheme for the protection of the retained trees (the tree protection plan) and the appropriate working methods (the arboricultural method statement) in accordance with paragraphs 5.5 and 6.1 of British Standard BS 5837:

Trees in relation to design, demolition and construction - Recommendations (or in an equivalent British Standard if replaced) shall have been submitted to and approved in writing by the local planning authority. The scheme for the protection of the retained trees shall be carried out as approved.

- 6) The details submitted in accordance with condition (5) above shall include:
- i. a plan showing the position of every tree at the site entrance and along the western boundary of the site and on land adjacent to the western boundary of the site that could influence or be affected by the development;
 - ii. a schedule in relation to every tree identified listing:
 - 1. information as specified in paragraph 4.4.2.5 of British Standard BS 5837: Trees in relation to design, demolition and construction - Recommendations) (or in an equivalent British Standard if replaced); and,
 - 2. any proposed pruning, felling or other work;
 - iii. in relation to every existing tree identified to be retained on the plan referred to in i) above, details of:
 - 1. any proposed alterations to existing ground levels, and of the position of any proposed excavation, that might affect the root protection area; and,
 - 2. all appropriate tree protection measures required before and during the course of development (in accordance with paragraph 5.5 of British Standard BS 5837) (or in an equivalent British Standard if replaced);
 - iv. areas of existing landscaping to be protected from construction operations and the method of protection.

END