
Appeal Decision

Site visit made on 30 March 2017

by Grahame Kean B.A. (Hons), PgCert CIPFA, Solicitor HCA

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

Decision date: 16 June 2017

Appeal Ref: APP/C1570/X/16/3156236

Down House, Matching Road, Hatfield Heath, Bishop's Stortford CM22 7AS

- 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 Mrs J Templeton-Knight against the decision of Uttlesford District Council.
 - The application Ref UTT/16/1703/CLP, dated 14 June 2016, was refused by notice dated 28 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: single storey, detached residential outbuilding.
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Decision

1. The appeal is dismissed.

Main issue and preliminary matter

2. The main issue to consider is whether, irrespective of the wording of the reason for refusal, the Council's decision to refuse the LDC was well-founded. In particular whether the proposed development would be permitted development under Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
3. Article 3 and Class E(a) of the GPDO grant planning permission to provide a building required for a purpose incidental to the enjoyment of a dwellinghouse. Class E requires that such a building must be in the curtilage of the dwelling.
4. I had concerns regarding the applicability of a condition that was attached to a planning permission granted in respect of an adjoining property, The Gardeners Retreat, and whether the outbuilding would be erected in the curtilage of Down House. Further comments were invited from the parties about the sub-division of the Gardeners Retreat; the conditions attached to the permission for that dwelling and whether the outbuilding is outside the curtilage of Down House, even if it is part of the same planning unit or used for purposes incidental to the dwelling. I have taken into account the comments received.

Reasons

5. The application was refused as due to the separation and distance from the main dwelling, the applicant was considered to have failed to demonstrate that the building proposed would, if instituted or begun at the time of application be
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- required for purposes incidental to the use of dwellinghouse as such as required by Schedule 2, Part 1, Class E of the GPDO.
6. Down House is a substantial 6 bedroomed house with extensive grounds. The ground floor comprises a large open plan area which functions as a kitchen and living space, a separate dining area and a separate study room. There is also an integral garage which I saw was not used as a garage but for storage purposes, containing various items of domestic paraphernalia.
 7. Also on the ground floor is a room described during my visit as a utility room which was in fact two distinct spaces. The first was used as a scullery with a washing machine and a sink. Leading off this space through a doorway is a room which, when I visited contained four items of gym equipment, namely two exercise bikes or trainers, a treadmill and a stepper.
 8. Planning permission was granted in 2001 (the "planning permission") for the conversion to a dwelling of a gardener's building on land referred to as "Down House Gardeners Cottage". This became the property known as The Gardeners Retreat. Neither the Council nor the appellant has been able to supply the approved plans that form part of the planning permission, apart from the site location plan submitted with the application. However this shows clearly that the field in which the outbuilding is proposed formed part of that application.
 9. An application for a certificate of lawfulness for a single storey rear extension to The Gardeners Retreat was refused in 2014. The plan for that application also clearly suggests that the original plot of The Gardeners Retreat had included the field where the outbuilding is proposed, but was sought to be reduced for the purposes of that application. The field was retained in the ownership of appellant.
 10. Condition C.6.13 attached to the planning permission states:

"Notwithstanding the provisions of The Town and Country Planning (General Permitted Development) Order 1995 (or any Order revoking or re-enacting that Order with or without modification), no extensions shall be constructed (other than any expressly authorised by this permission or any other grant of express planning permission), freestanding buildings erected...on any part of the site without the prior written permission of the local planning authority."
 11. Article 3(4) of the GPDO states that:

"Nothing in this Order permits development contrary to any condition imposed by any planning permission granted or deemed to be granted under Part 3 of the Act otherwise than by this Order".
 12. Had the condition limited removal of permitted development rights to development within the curtilage of the dwelling, it might be argued that if the curtilage of The Gardeners Retreat now excludes the field proposed for the outbuilding, the condition is no longer pertinent. But that is not what the condition states. By referring to "the site" the condition makes clear that the land affected by the condition is the whole of the land within the application site.
 13. Where land that is subject to a planning condition changes hands that does not, in or of itself render a condition devoid of any effect. The new owner has the ability to seek a variation to the permission in order to suit his or her

preferences for development on the land. The reason for imposing Condition C.6.13 was as follows: "*The further extension of the building, erection of other ancillary buildings and siting of chattels would adversely affect the openness of the Green Belt through overdevelopment*". It is beyond the scope of this appeal to consider in any detail the merits of the condition but I see nothing in it or the reason for imposing it, as inimical to its essential validity. It was clearly imposed to protect the totality of the site from development that was potentially harmful to the Green Belt, by requiring in effect an application for express planning permission, including for development such as "freestanding buildings" on any part of "the site". The proposed outbuilding would in my view constitute a freestanding building within the meaning of that term.

14. The courts have recently accepted that some latitude can be given in the process of interpretation of conditions by discovering implied terms where it is appropriate so to do. However the terms of Condition C.6.13 are in my view clear and unambiguous. An argument to the contrary might be formulated as follows: "Notwithstanding" when used in the condition, means in effect that development is precluded only where it would otherwise be granted by the GPDO and, since a freestanding building would only be permitted development were it within the curtilage of The Gardeners Retreat, if it is no longer within that curtilage, the condition cannot have been intended to apply to land that becomes severed from the curtilage.
15. In my view however it is impermissible to treat the condition in this way because "the site" can mean only one thing: the land that is bounded by the site plan submitted with the application and approved as part of the planning permission. The reason for granting the condition provides part of the context in which the condition is to be read. It may not have occurred to those drafting the condition that, to put it bluntly, some of the land might later be subject to a "curtilage swap" such that it might no longer be subject to restrictions on development. However, taken with the condition itself it seems clear that the intent is to protect all of the land to which it applies from potentially insensitive development.
16. So to infer a nuanced meaning for "site" or to supply wording to qualify its application, seems unnecessary. It would mean that anyone could sever large swathes of land in a site subject to a similar condition, and potentially frustrate the key objective behind its imposition, namely the protection of the Green Belt. That is not to say of course, that the severed land might not validly become part of another curtilage, but development upon it will still be subject to the primacy of Article 3(4) of the GPDO. The developer should first therefore seek permission under the condition or its removal or variation as it applies to the land under consideration.
17. For these reasons I find that Article 3(4) of the GPDO applies so as to make the proposed erection of the outbuilding contrary to Condition C.6.13 which prevents any freestanding building being erected on the proposed site.
18. In light of my findings it is strictly unnecessary to consider whether the proposed outbuilding is in the curtilage of Down House. This is because, even if it were in that curtilage, then (assuming the proposed building to be for a purpose incidental to the enjoyment of the main dwelling) the permission from which it potentially benefits is specifically excluded by the terms of Article 3(4).

19. However given the way in which the parties approached the appeal it would be helpful to state my reasons in relation to these matters which I can do in brief.
20. The courts have provided factors to be taken into account in determining what constitutes a curtilage. Relevant factors include ownership, physical layout, and the use and function of the land, past and present. In the domestic context it has been held that "curtilage" means a piece of land attached to a dwelling and forming one enclosure with it, not restricted in size but it must fairly be described as being part of the enclosure of the house to which it refers. It could include outbuildings and gardens, and possibly other land such as a small paddock close to the house. Whether land forms part of a curtilage is a question of fact and degree.
21. Within the grounds are a tennis court, a swimming pool and a number of outbuildings. The proposed outbuilding would be sited in a field noticeably less cultivated than the rest of the grounds. It contains trees and storage sheds and has been used as a bonfire patch. Although the field may be viewed as akin to a small paddock and is in the same ownership as Down House, it is set apart, and at some distance, from the main dwelling. It is accessed through a gate to the north-west, with another gate to the south-east that gives onto a shared access road. The field is bounded to the north by private land and to the east and south by the access roads. To the west lies The Gardeners Retreat which is positioned between the field and Down House. The field has thus become more isolated from the main house and remains remotely located from the more formal garden areas surrounding it and, to a lesser extent the intermediate adjoining areas containing the swimming pool and tennis court.
22. Applying the established criteria as to the existence of a planning unit, I am satisfied that the field is part of the same planning unit as Down House, being in a single unit of occupation with it and having a current use incidental to the use of the dwelling. However, due in particular to its marked separation and distance from the main dwelling, I find as a matter of fact and degree that it is not part of the curtilage of Down House.
23. The proposed use of the building is for a gym and games room with ancillary facilities. As for the gym use being reasonably incidental to the enjoyment of the main dwelling I have my doubts, since the house itself seems to cater adequately for gym related activities. As about a third of the accommodation would be for a gym, I am not convinced that the new building as proposed would be for purposes genuinely incidental to the enjoyment of the main dwelling as such.

Conclusion

24. For the reasons given above, I conclude that the Council's refusal to grant a LDC in respect of a single storey, detached residential outbuilding at Down House, Matching Road, Hatfield Heath, Bishop's Stortford CM22 7AS was well-founded and that the appeal should be dismissed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Grahame Kean

INSPECTOR