

Appeal Decision

Site visit made on 15 June 2017

by Andrew Dale BA (Hons) MA MRTPI

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

Decision date: 11 July 2017

Appeal Ref: APP/C1950/X/16/3163136

1 Hawkshead Farm Cottages, Hawkshead Lane, North Mymms, Hatfield AL9 7TF

- 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 (hereinafter "certificate").
 - The appeal is made by Mr I Hunt against the decision of Welwyn Hatfield Borough Council.
 - The application ref. 6/2016/1308/LAWP, dated 29 June 2016, was refused by notice dated 12 October 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 is sought is described at section 8 of the application form as *erection of detached building in garden and loft conversion with rear dormer*.
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Decision

1. The appeal is allowed and attached to this decision is a certificate describing the proposed operations which are considered to be lawful.

Matters of clarification

2. An application for a certificate enables owners or others to ascertain whether specific uses, operations or other activities are or would be lawful. Lawfulness is equated with immunity from enforcement action.
 3. A certificate is not a planning permission. Thus, the planning merits of the proposed development are not relevant in the context of an appeal made under section 195 of the 1990 Act as amended.
 4. My decision must rest on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts in this appeal rests on the appellant. The test of the evidence is made on the balance of probabilities.
 5. The drawing numbered 451416-4 is titled BLOCK PLAN but the Job Title set out above this is recorded as ERECTION OF DETACHED BUILDING TO BE USED AS GRANNY ANNEX. This simply causes confusion. I note that there was an earlier application for a certificate considered and refused by the Council on the
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1st June 2016 under ref. 6/2016/0696/LAWP where the erection of an annex was indeed proposed. Perhaps this existing block plan drawing was first prepared around the time of that earlier application. However, it contains no proposals of any description and the basic information it does offer is replicated on the location plan and existing site plan on drawing number 451416-5. As such, I shall disregard the drawing numbered 451416-4 for the sake of clarity. To make sense of the drawing numbered 451416-2, I have interpreted the text GROUND FLOOR as FIRST FLOOR. I do not consider any party would be put at a disadvantage by these approaches.

Main issue

6. I consider that the main issue is whether the Council's decision to refuse to grant a certificate was well founded.

Reasons

7. The appeal property is a two-storey, semi-detached cottage situated off New Cottages Lane, a private road which joins onto Hawkshead Lane. It is a compact two-bedroom dwelling of some age. The plot associated with it extends to about 460 sq. m (based on the figure provided by the appellant), with most of this land lying to the south of the dwelling.
8. Firstly, it is proposed to carry out a loft conversion aided by the construction of a rear dormer. This work would provide a bedroom and en suite bathroom. Secondly, it is proposed to erect a flat-roofed detached outbuilding close to the southern and western boundaries of the garden. This would provide a gym/dance studio, wet room and home office, be built to a height of 2.5 m and have an agreed footprint of about 62 sq. m. The internal floor area of the outbuilding would be about 52 sq. m, using figures supplied by the Council.
9. Neither the Council's decision notice nor its delegated report is critical of the proposed loft conversion with a rear dormer. The appellant says that the Council has verbally confirmed that this part of the development proposed would be lawful. I see no reason to disagree.
10. Thus, the main issue turns on whether the proposed detached building in the garden would have amounted to permitted development at the time of the application.
11. At that time, subject to various limitations, Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) permitted the provision within the curtilage of a dwellinghouse of "any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...". It is common ground that none of the physical limitations in Class E.1, relating to such matters as height, location and the proportion of the curtilage covered, would be infringed by the proposed development.
12. The Council's decision notice states that: "The outbuilding proposed, based on the evidence supplied alongside this application, has not been sufficiently reasoned for a purpose incidental to the enjoyment of the dwellinghouse." Hence, the Council considered that the relevant permitted development right would not be engaged.

13. The Council refers to the court case of *Emin v SSE* [1989] JPL 909. This 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 dwellinghouse. The physical size of the building in comparison to the dwellinghouse 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 proposed building was genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. These issues are to be assessed with an element of objective reasonableness and as a matter of fact and degree.
14. That the footprint of the outbuilding would exceed the footprint of the host dwelling is more an indicator of the compact plan of the latter than of an excessively-sized outbuilding as such. In terms of the comparative floor spaces, the Council appears to have reused the footprint figures. The internal floor area of the outbuilding is about 52 sq. m. Using the appellant's figure of 79 sq. m for the gross internal floor area of the dwelling, which seems to be broadly accurate, the outbuilding would equate to about 66% of the floor space of the host dwelling. Moreover, the appellant estimates that the outbuilding would cover only about 13% of the site area. The single-storey built form would clearly be subordinate to the two-storey cottage. I find nothing unusual about the size of the outbuilding relative to the size of the host property and garden. The only direct constraint on the size of the outbuilding is imposed within limitation Class E.1 (b), which the Council confirmed would not be breached.
15. Having regard to the case law referred to in paragraph 13 above, it is more important to show that what is proposed, including the floor space attributed to each proposed use, is genuinely and reasonably required for a purpose incidental to the enjoyment of the dwelling as such.
16. The purposes for which this outbuilding would be used would fall within the wide range of incidental purposes that are permitted by Class E and they would be connected primarily with the domestic and leisure activities of the occupiers of the house. I am aware that a purpose incidental to a house would not normally cover the use of an outbuilding for primary living accommodation such as a bathroom. The wet room would contain a toilet and sink and have sufficient space for a shower. It could be viewed as a bathroom. However, the wet room would seem to me to be an ancillary and reasonable adjunct to the gym/dance studio which is required in itself. It would, in all probability, be only used when the occupiers partake in the incidental uses in the outbuilding. As a matter of fact and degree, the wet room could not be regarded as adding to or extending the normal primary living accommodation of the house as such.
17. The appellant indicates that he lives in the house with his wife and daughters. From my tour of this house, it was self-evident to me that additional floor space for the proposed uses could not be readily created within the existing house unless one or, more likely, two valuable habitable rooms were given up. That would not be a practical way forward given the other domestic needs of the occupiers. The Council has not suggested that the existing dilapidated shed on the site is fit for purpose.

18. The appellant is a chartered surveyor who often works from home. Home offices come in all shapes and sizes. A proposed floor space of approximately 15 sq. m is not excessive in itself for its intended purpose, especially if there is a requirement to hold files for significant periods of time as suggested in the Council's delegated report. The home office would be larger than each of the two ground floor habitable rooms in the existing house but both those rooms are fairly compact. I am not convinced that this fact should count against the provision of the home office in the form proposed.
19. About 37 sq. m of floor space would be set aside for the gym/dance studio and wet room. As well as the wet room, there would be three pieces of gym equipment, an open area for dance and an area of circulation space between the doors to the main entrance, the home office and the wet room. The appellant has confirmed that one of his daughters is a ballet student who has been a member of the Penny Waterman School of Dance for 18 months and has to practice at home. The floor space shown might be equivalent to the internal floor space of the first floor of the cottage, but the Council has not pointed to any particular use which would be allocated an excessive amount of space on the submitted plans. It seems to me that the spaces would fulfil their intended purposes and nothing more. The space set aside in this part of the building would be reasonable and not excessive for single family usage.
20. The Council is concerned about the planning history of the site I referred to in paragraph 5 above. Apart from the misleading block plan which I have decided to disregard, I have not seen any reference in this application or this appeal to the term "annex" that the Council mentions in its delegated report. I have not seen the plans that accompanied the previous application. No evidence is presented to show that the building then proposed is identical in all respects to the one before me. All applications and appeals have to be determined on their own merits and facts and in the case before me I have found that the size of the proposed detached building in the garden would be reasonably required to serve the specified incidental purposes.
21. In the light of the above and having taken into account all other matters raised, I find on the balance of probabilities that the proposed outbuilding, in the form and for the uses as proposed by the appellant, would be permitted development, being a building required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Conclusion

22. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Dale

INSPECTOR