



Appeal Decision

Site visit made on 27 June 2017

by Paul Freer BA (Hons) LLM MRTPI

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

Decision date: 08 August 2017

Appeal Ref: APP/R3650/X/16/3160900

Rockwood, Haslemere Road, Witley, Godalming GU8 5PU

- 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 M Shaw of Rockwood Park Ltd against the decision of Waverley Borough Council.
 - The application Ref WA/2016/1640, dated 12 August 2016, was refused by notice dated 7 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 of lawful use or development is sought is the construction of an outbuilding.
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Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Procedural Matters

1. The Council's decision to refuse the certificate of lawful use or development cites just one reason, namely that it was considered that the proposed outbuilding could not be considered reasonably incidental to the applicants' enjoyment of the main dwelling due to its size, scale and the scale of the proposed uses. The appellant had requested that this appeal be conjoined with an earlier appeal (APP/R3650/X/16/3156274) against the refusal of a previous application for a certificate of lawful use or development for a different outbuilding, but which had been refused for essentially the same reason.
2. In the event, that earlier appeal was determined in isolation. In dismissing the appeal, the Inspector had raised the issue of the principal elevation of the building and had sought the views of the parties on that point. However, because of the overlap in the timing of the two appeals, neither the appellant nor the Council have referred to the principal elevation point in their respective evidence in relation to this appeal. In view of the findings of the previous Inspector, the question as to which elevation is the principal elevation of the building for the purposes of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO) is clearly a matter on which I must form my own opinion. I therefore sought the views of the parties on that point. In addition, during the course of my site visit, I identified a number of matters on which I required further information in order to reach an informed decision and requested that details on those matters be submitted. I have taken the responses received in relation to all these matters into account in reaching my decision.

Reasons

3. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) 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; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.
4. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Article 3, Schedule 2, Part 1, Class E of the GPDO. Having regard to the Council's reason for refusal and the findings of the previous Inspector, my decision turns on:
 - whether the proposed outbuilding would be for a purpose incidental to the enjoyment of the dwellinghouse as such, and
 - whether any part of the outbuilding would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

Incidental use

5. The Council questions whether, due to its size, scale and the scale of the proposed uses, the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse. Consideration of this issue raises two separate questions: is the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed outbuilding reasonably required for that purpose.
6. In terms of whether the purpose of the proposed outbuilding is incidental to the enjoyment of the dwellinghouse as such, *Emin v SSE and Mid Sussex District Council*¹ confirms that the keynote is reasonableness. *Emin* establishes that what is abnormal is not necessarily unreasonable, but also that what could be regarded as incidental does not depend on the unrestrained whim of the occupier. The question to be addressed is whether the uses to be carried on in the proposed building are incidental or conducive to the very condition of living in the dwellinghouse.
7. The answer to this question will always be fact sensitive and in this case the starting point is that Rockwood is a substantial dwelling, with a total floor area of some 1,385m². The main building, believed to have been constructed in 1910, is two-storey to eaves level with an additional storey on the roof. The accommodation at ground floor level includes a "Great Hall" flanked by a Drawing Room and a Dining Room, with a kitchen, library and family room house also on this level. The upper floors provide a total of 10 bedrooms.
8. The proposed outbuilding would be single-storey, set within the sloping ground, with a floor area of some 600m². The outbuilding would provide an indoor swimming pool, gym, sauna and changing facilities.

¹ *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

9. As a matter of principle, it does not seem unreasonable to me that the occupier of a dwellinghouse should seek to have a swimming pool, a gym and a sauna at his/her place of residence. These are facilities that many home owners would aspire to. As such, these are aspirations that apply universally and go beyond the whim of an individual owner or occupier. Indeed, Class E of the GPDO specifically refers to swimming or other pools. I am therefore satisfied that the uses within the proposed outbuilding may be regarded as being incidental to the enjoyment of the dwellinghouse as such.
10. It is therefore necessary to go on to consider whether the proposed outbuilding is reasonably required for that purpose. In this case, there are two main factors to be taken into account in answering this question: the size of the proposed outbuilding, and whether the facilities sought could be provided elsewhere on the site.
11. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E². Nevertheless, the appellant confirms that the outbuilding has been specifically designed to accommodate a swimming pool and gym, with associated sauna and changing facilities. There is circulation space around the pool, but in my judgment this does not appear excessive in relation to the facilities provided.
12. In dismissing the previous appeal, the Inspector referred to a part two-storey, part single-storey building located within the domestic curtilage of the main house and which was built to provide leisure facilities for the main house. That building contains a swimming pool and various games rooms on two floors and is, I understand, known as the Pool House. Although the Inspector was aware that planning permission had been granted for the conversion of the Pool House to residential accommodation, at the time of the Inspector's site visit it was providing a wide range of leisure facilities within the curtilage of the property. This, together with the unexplored possibility of using other parts of the main dwelling, led the Inspector to conclude that the provision of the leisure facilities in the outbuilding then proposed was an unrestrained whim on the part of the appellant.
13. At the time of my own site visit, the Pool House was not being used, although the swimming pool (albeit now drained) was evidently still in place. As part of the information provided at my request following the site visit, I have been provided with a copy of the planning permission for the residential conversion of the Pool House, together with confirmation that the conditions precedent imposed upon that permission have been discharged. I have also been provided with details of a planning permission for the subsequent extension of the Pool House once converted.
14. At the time of my site visit, it did not appear that the planning permission for the residential conversion of the Pool House has been implemented and I have seen nothing in writing from the Council to confirm that a material start has been made on it. Nevertheless, the fact that the conditions precedent have been discharged and that a further planning permission for an extension to the building has been sought strongly suggest that the appellant has every intention of implementing that permission. I also note that the Council's view that, now that planning permission has been granted for the residential

² *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

conversion of the Pool House, it would be unreasonable to expect the appellant to use that building for leisure purposes.

15. The appellant has also addressed the question as to whether any part of the main dwelling could be utilised to provide the facilities provided within the proposed outbuilding. With reference to the floor plans of Rockwood, the appellant explains that the facilities sought could not be provided within the main house because, although a substantial building, the internal configuration of the building does not lend itself to the provision of a facility the size of a swimming pool. In my judgment, this includes the cellar, which by reason of its size and shape, could not accommodate a swimming pool. Consequently, whilst the main house could perhaps accommodate some of the uses proposed in the earlier proposal (such as the home cinema), a possibility which the previous Inspector had identified, I am satisfied that the same does not apply in relation to the proposed uses now before me.
16. I therefore conclude that the proposed outbuilding is reasonably required for the purpose for which it was designed, that being a purpose incidental to the very condition of living in this particular dwellinghouse. Moreover, even when the actual size of the proposed outbuilding is taken into account, I consider that the overall scale and purpose of the proposed outbuilding is not unreasonable in the particular circumstances of the case, having regard to the fact that Rockwood is itself a substantial building.

Principal elevation

17. Article 3, Schedule 2, Part 1, Class E.1 (c) of the GPDO states that development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. The *Permitted Development for householders: Technical Guidance* (Technical Guidance) published by the Department for Communities and Local Government in April 2016 provides guidance on the interpretation on Part 1 of the GPDO, including guidance on the meaning of 'principal elevation'.
18. The Technical Guidance states that the principal elevation will, in most cases, be that part of the house which fronts, directly or at an angle, the main highway serving the house. The Technical Guidance also explains that the front elevation will usually contain the main architectural features, such as the main bay windows or a porch serving the main entrance of the house. The Technical Guidance goes on to explain that there will only be one principal elevation on a house and that the principal elevation will usually, but not exclusively, be the elevation understood to be the front of the house.
19. In assessing the proposed outbuilding against the Technical Guidance, it may first be noted that Rockwood is sited well back from the public highway, Haslemere Road (A286), and is accessed via a private drive. Although it serves the house, the latter is not a main highway. In this context, it is relevant that the Technical Guidance refers to the main highway serving the house (emphasis added). In other words, the present tense. It follows that Rockwood does not presently have a frontage to a main highway serving the house.
20. I note, and accept without hesitation, the evidence in the Heritage Advice Note submitted by the appellant that historical Ordnance Survey maps show a network of roads in this area. I also have no reason to doubt the logical

proposition that the north-east elevation of Rockwood at one time fronted one of those roads. However, that was a historical position which has been overtaken by the current access arrangement. In other words, the historical road network 'served' the house in the past tense rather than is 'serving' it in the language of the Technical Guidance. For that reason, I do not consider that the historic relationship with a previous road network can have any bearing on my assessment against this aspect of the Technical Guidance, although I accept that the historical arrangement is relevant in other respects, to which I now turn.

21. In the absence of a frontage to a main highway serving the house, it is necessary to exercise planning judgment to determine which elevation constitutes the principal elevation, based upon an assessment of the main architectural features. In undertaking this exercise, I am assisted by the aforementioned Heritage Advice Note and the comments of the Council's Historic Buildings Officer. Neither of these documents was available to the previous Inspector when reaching her opinion that the south-west elevation of Rockwood is the principal elevation for the purposes of the GPDO.
22. The Heritage Advice Note explains that domestic architecture of the early 20th century was based upon the developing philosophies of the Arts and Crafts movement, in which the preference was for plan leading elevations, and for the site itself dictating orientation and layout. The Council's Historic Buildings Officer comments that substantial country houses of this period typically had a north entrance and a south garden. It appears to me that Rockwood accords with both of the above observations, insofar as the north-east elevation took advantage of the road network present at the time to provide the front entrance and the south-west elevation took advantage of the topography of the site to exploit expansive views of the surrounding countryside.
23. The Heritage Advice Note describes the asymmetrical composition of the north-east elevation as characteristic of the Arts and Crafts movement and, architecturally, as being of its time. The main architectural features on this elevation, including the stained glass main stair window, the entrance bay tower and the series of prominent gables are imposing and are designed to be seen when approaching the house. The Council's Historic Buildings Officer comments that the apparently informal composition of the north-east elevation is in fact carefully balanced, and that the inclusion of features such as the attic turret and large window were intended to imply a baronial hall within. It is suggested that the inclusion of these features reflects the ambition of wealthy landowners of the period to impress with an imposing statement to visitors.
24. In sharp contrast to the informal and asymmetrical north-west elevation, the south-west elevation, as the previous Inspector noted, has a formal and symmetrical appearance. It is, in my view, the more architecturally pleasing elevation. The main bay windows and gables at either end are unified by the elevated terrace at first floor level. Although I understand this terrace to be a later addition, it nevertheless reinforces the importance of this elevation in terms of taking maximum advantage of expansive views possible to the south-west. Moreover, the whole composition is carefully designed to allow views from ground floor level, both from the terrace at garden level and from the Great Hall within the house itself. This is consistent with the preference in the Arts and Crafts movement for the site itself to dictate orientation and layout.

25. In my opinion, neither the north-east elevation nor the south-west elevation may be considered to predominate in architectural terms. Both elevations, it seems to me, equally reflect the ideology of the Arts and Crafts movement. I therefore consider that an assessment of the main architectural features does not, in itself, reveal which is the principal elevation for the purposes of the GPDO.
26. I therefore rely on another consideration set out in the Technical Guidance: namely, that the principal elevation will usually be the elevation understood to be the front of the house. As indicated above, I accept without hesitation that the historical road network dictated that the entrance to Rockwood was in the north-east elevation. It follows that the main entrance to the house, as defined by the recessed entrance with bay tower above, was in the north-east elevation and that this elevation was understood to be the front of the house. The subsequent replacement of the historical road network with the current private access drive has not changed that. Consequently, with the elevations being equal in terms architectural importance, I consider that the obvious perception of the north-east elevation as being the front of the house dictates that this is the principal elevation for the purposes of the GPDO.
27. In reaching that conclusion, I am mindful that my colleague reached a different view on the evidence then before her. However, as indicated above, I have been assisted in my consideration of this issue by expert evidence from two Heritage specialists. That evidence was not available to my colleague. Moreover, I was struck by the remarkable consistency between the evidence of the two Heritage specialists and I therefore found this evidence to be very persuasive. It is on the basis of this new evidence that I have arrived at my own opinion on this matter.
28. It follows from the above that no part of the proposed outbuilding would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. I am therefore satisfied that the proposed outbuilding accords with Article 3, Schedule 2, Part 1, Class E.1 (c) of the GPDO.

Conclusion

29. 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 construction of an outbuilding at Rockwood, Haslemere Road, Witley, Godalming GU8 5PU was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Paul Freer

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 12 August 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development accords with the limitations set out in Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Paul Freer

Inspector

Date: 8 August 2017

Reference: APP/R3650/X/16/3160900

First Schedule

The construction of an outbuilding (as shown on Drawing Nos: 089: 01,02,03,04,05,06).

Second Schedule

Land at Rockwood, Haslemere Road, Witley, Godalming GU8 5PU

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use /operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, was /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 08 August 2017

by Paul Freer BA (Hons) LLM MRTPI

Land at: Land at Rockwood, Haslemere Road, Witley, Godalming GU8 5PU

Reference: APP/R3650/X/16/3160900

Scale: Not to scale

