
Appeal Decision

Site visit made on 13 February 2018

by David Richards BSocSci DipTP MRTPI

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

Decision date: 05 March 2018

Appeal Ref: APP/R0660/X/17/3180510

Hawthorne House, Free Green Lane, Over Peover, Knutsford, Cheshire, WA16 9QY

- 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 Steven Watmore against the decision of Cheshire East Council.
 - The application Ref 17/0555M, dated 23 January 2017, was refused by notice dated 12 May 2017.
 - 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 proposed home office, entertainment and fitness suite annexe.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the Appellants against the Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue is whether the proposed development would be 'permitted development' under Schedule 2, Part 1, Class E(a) of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Reasons

4. It is not disputed that the proposed building would lie within the residential curtilage and within the rear garden of Hawthorne House. The design proposes a single storey building of brick construction with a slate roof. The location in the Appellants' garden would be well screened and not visible from anywhere outside the site. The Appellants state that it would incorporate all their requirements for purposes incidental to the enjoyment of the dwelling: 'The proposed outbuilding shows a new home office suitable for a married couple with grown up sons who have numerous and varied interests, a jacket/boot store, a single toilet and wash hand basin, a snooker room allowing a large family to socialise and play snooker and pool together when not working, a cinema room where a large family can watch films together, a store where they

can place spare chairs/cinema room seats for even busier times of the year such as Christmas, Birthdays, anniversaries and other special occasions, a store to place gym shoes/clothes/towels and cleaning equipment etc. and a complete home gym allowing the family to exercise at home and to keep fit which is especially important when running a 24 hour business operation on a 100 acre site.

5. Hawthorne House is a substantial modern detached dwelling, occupied by the owners of the adjacent horticultural nursery. There is an existing annex housing a swimming pool and associated equipment. A similar building has been erected on a site to the south of Hawthorne House. Retrospective planning permission (Ref. 15/4299M) was refused and an appeal subsequently dismissed. An application for a certificate of lawful use or development (Ref. 16/5093M) was refused and an appeal subsequently dismissed on 1 December 2017¹. Appeals against a related enforcement notice requiring demolition of the building and reinstatement of the site to its former condition were also dismissed and the enforcement notice was upheld.²
6. The Council has not challenged the size of the building in relation to the parameters set out in the GPDO. The remaining point of dispute is whether or not the proposed building would be *"required for a purpose incidental to the enjoyment of the dwelling house as such"*.
7. The Council considers that the building is of sufficient size to provide bedrooms and living spaces, and is concerned that this may be a mechanism to obtain a second dwelling on the site. With a footprint of approximately 264 m² it is undoubtedly large enough to be used as a dwelling, if it were to be appropriately configured internally. However, Class E precludes use as a separate dwelling house, and in the event of any unauthorised change of use the Council would be in a position to exercise its enforcement powers and require the use to cease.
8. Established case law³ indicates that the term "incidental" connotes a subordinate land use in relation to the enjoyment of the dwelling house itself. The term "required" for the purposes of Class E should be interpreted as *reasonably required*, and not so broad as to encompass the unrestrained whim of the occupier.
9. The plans accompanying the application show a substantial single storey building. Internally it is subdivided into a number of principal activity rooms including a large snooker room, a gym, a home cinema and what is described as a home office, set around an internal lobby and circulation space, off which there would be a cloakroom adjacent to the entrance porch. There would also be a number of subsidiary rooms labelled as 'stores' serving the cinema, the gym and the home office, together with a further unlabelled space off the gym.
10. The building is identical in size to the building that is the subject of the enforcement action referred to above, and is subdivided in the same manner. The internal spaces are labelled differently in the plans submitted with the appeal, for example the snooker room in the current scheme is labelled 'general recreation' in the plans of the existing building, the store adjacent to

¹ Appeal Ref: APP/R0660/X/17/3170479

² Appeal Refs: APP/R0660/C/17/3170430 & 3170452

³ Emin v SSE and Mid-Sussex District Council [1989] 58 P & CR 416

the home office is labelled 'office canteen', the home cinema has a pool table and is labelled 'pool' in the existing building, and the unlabelled room adjacent to the gym is labelled 'shwr' in the plan of the existing building.

11. I accept that the Appellants' do not currently intend to configure the proposed building in the same way. Nevertheless I consider that the various spaces to be provided exceed what can be considered to be reasonably required for purposes incidental to the enjoyment of the dwelling house. The 'home office' (including a store) would be a significant element of the proposed building. The layout plans indicate a table suitable for meetings, and two computer work stations, together with other accessories in a large space with a generous store room attached.
12. In considering the building subject to enforcement action, the Inspector referred to previous comments from one of the Appellants concerning the difficulties of holding meetings in the coffee shop at 'the farm', and the opportunity that the office space would provide 'to meet and greet in the comfort of my home office'. The Inspector considered that this pointed to 'a function amounting to rather more than a use incidental to a dwellinghouse'. I accept that the Appellants state that they have no intention now of using the office for commercial purposes. However the plan and layout now proposed is identical, with the exception of the 'office canteen' now being labelled a store. To my mind, the Appellant has failed to provide any justification for home office provision on this scale, and it is in excess of what might be considered reasonably necessary so as to be considered incidental.
13. There are two other areas labelled as stores, together with an unlabelled small room off the gym, which could conceivably be used for storage, though overall the level of storage provided significantly exceeds what might be considered functionally necessary for the range of activities proposed.
14. The existing dwelling is a substantial dwelling, with three large reception rooms and an extant planning permission for conversion of the existing entrance to a study. I am also conscious that there is already a substantial building housing a swimming pool in the grounds of Hawthorne House. Bearing in mind that some recreational activities may be expected to take place within the dwelling itself, the additional provision now proposed appears to be in excess of what is reasonably necessary to be considered incidental to the enjoyment of the dwelling house.
15. In summary, while I accept that some of the accommodation in the building could be regarded as being incidental to Hawthorne House, when the proposed structure is viewed as a whole I am not satisfied, as a matter of fact and degree, that it has been demonstrated that the building can reasonably be regarded as required for a purpose incidental to the enjoyment of the dwelling.
16. Accordingly, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed home office, entertainment and fitness suite annexe within the rear garden area of Hawthorne 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.

David Richards

INSPECTOR