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## Appeal Decision

Site visit made on 27 February 2018

**by Paul Freer BA (Hons) LLM PhD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 27 April 2018**

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**Appeal Ref: APP/J1915/X/17/3181880**

**Little Croft, Ermine Street, Colliers End, Ware, Hertfordshire SG11 1EH**

- 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 & Mrs A & K Borgia against the decision of East Hertfordshire District Council.
  - The application Ref 3/17/1059/CLP, dated 4 May 2017, was refused by notice dated 29 June 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 the erection of an outbuilding.
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### **Decision: the appeal is dismissed**

#### **Procedural Matter**

1. During my site visit, I noted that the land to the rear of the dwellinghouse, where the proposed outbuilding would be located, was being used for the storage of building materials. There were also a number of timber sheds and a metal shipping container in this part of the site. A number of vehicles were parked there, including two JCB-type vehicles (one with a fork-lift attachment, the other with a bucket attachment) and an open-back lorry. In addition, I noted that the rear elevation of the main dwellinghouse was physically separated from this part of the site by an enclosure, comprising a timber frame with wire mesh. Taken together, this was sufficient for me to question in my own mind whether this land was being used for a purpose not ancillary or incidental to the use of the dwellinghouse known as Little Croft.
2. The storage of the building materials and the other items described above do not feature in the written evidence before me, and were not referred to in the previous appeal decision relating to a different outbuilding on this site (APP/J1915/X/16/3155140). However, whether or not the proposed outbuilding would be located within the curtilage of the dwellinghouse is fundamental to my consideration of the main issue raised by this appeal. I therefore sought the views of the appellant and the Council as to whether the land to the rear of Little Croft is within the curtilage of that dwellinghouse.
3. The Council made no comment, but the appellants explain that the building materials and construction vehicles are to be used to construct the two storey side and rear extension to the main dwelling that has been granted planning permission by the Council (Ref: 3/16/0639/HH). The timber sheds and metal

shipping container are also being used for storage in connection with that approved development. The appellants go on to explain that the construction vehicles have already been used to construct the access road to the rear of the site, and that the appellants intend to sell them once all on-site development works have been completed. The timber framed, wire mesh covered structure that has been added to the rear elevation of the existing dwelling is an outdoor run used by the appellants' cats and would be removed once work commences on the above mentioned extension. The appellants confirm that all of the land within the application site, including the land to the rear of the existing dwelling, has always been within its original curtilage and remains so.

4. I have some difficulty in reconciling the quantum of building materials stored on the land and the type of vehicles parked there at the time of my site visit with the construction of a domestic extension and outbuilding, given also that the access road has been partly completed. Nevertheless, I shall accept the explanation provided by the appellants. I shall therefore proceed on the basis that the land on which the proposed outbuilding would be sited does form part of the curtilage of the dwelling known as Little Croft, although this should not be taken as a definitive determination of this point.

### **Reasons**

5. 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.
6. 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 Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed outbuilding complies with the limitations at Classes E.1, E.2 and E.3, and I see no reason to take a different view.
7. The area of dispute is whether the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse as such. Consideration of this issue raises two 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.
8. In terms of whether the purpose of the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse as such, case law confirms that the keynote is reasonableness. Case law 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. This

approach follows that taken in *Croydon LBC v Gladden*<sup>1</sup>, in which the Court held that the concept of what was incidental to the enjoyment of the dwellinghouse as such involved an element of objective reasonableness and was not a matter solely at the whim of the individual owner or occupier.

9. In dismissing the previous appeal (APP/J1915/X/16/3155140), the Inspector found that the evidence before him was ambiguous, weak and incomplete. The appellant has sought to address that criticism in two ways: by removing some of the elements within the proposed outbuilding that the previous Inspector considered could not be justified as being incidental to the enjoyment of the dwellinghouse as such, and by providing more detail concerning the proposed purpose of the outbuilding.
10. As a result of removing some of the elements within the proposed outbuilding, the space now provided would accommodate a gym, games room, changing area/shower/toilet and an office. The outbuilding would also provide a garage that is considerably reduced in size compared to that of the outbuilding previously proposed. In addition, the outbuilding would include a store, which the appellant explains would be used to store gardening tools and equipment. In principle, all of these purposes could reasonably be considered incidental to the use of the dwellinghouse as such. It therefore remains for me to consider whether the size of the proposed outbuilding is reasonably required to accommodate those uses.
11. I have, in this respect, been provided with more detail about the appellants' circumstances than was before the previous Inspector. In particular, I now have detailed information about the cars owned by the appellants and their family. On the basis of that information, I understand that Mr A Borgia owns 3 cars, 1 van, 1 pick-up truck and 1 motor cycle. One of the cars is high value, and is said to require garaging for insurance purposes. One of the cars and the motor cycle are classic vehicles, and are also said to require garaging for insurance purposes. The van contains high value stock and, when stored overnight, in the appellants' view should preferably be garaged.
12. Mr L Borgia owns 2 cars, 1 van and 1 moped. One of cars is a classic car, and requires garaging for insurance purposes. The moped is also described as being 'classic' and for that reason requires garaging. The van contains high value stock stored overnight and in the appellants' view should preferably be garaged. Mrs K Borgia and Miss N Borgia each have one car.
13. This amounts to a total of 7 cars that in the appellants' view require garaging. The existing garage on the site can accommodate 2 of these vehicles, leaving 5 other cars that in the appellants' view should be garaged. This does not include the 2 vans, 1 motor cycle and 1 moped that, in the appellants' view, also require garaging.
14. I have two difficulties with the appellants' evidence in this respect. Firstly, although several of the vehicles owned by the family are said to be of high value and/or are classic vehicles, I have been provided with no documentary evidence to substantiate that. For example, I have not been provided with copies of the log books for the classic cars. Neither have I been provided with any documentary evidence from the insurance company that indicates that these vehicles should be garaged.

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<sup>1</sup> *Croydon LBC v Gladden* [1994] 1 PLR 30

15. My second difficulty relates to the high value stock stored overnight in the 2 vans. The appellants have not described what this stock is. The fact that the stock is stored in the vans suggests that it relates to a commercial use to which the vans are put when not parked at the property. If this is the case, then it would be difficult to justify these vans as being incidental to the use of the dwellinghouse as such, and there would be no logical reason to include a requirement to garage those vans in an outbuilding proposed under Class E of the GPDO. As it stands, in the absence of any evidence concerning the nature of the stock stored in the vans, I have no reason to believe that the garaging of these vans is incidental to the enjoyment of the dwellinghouse known as Little Croft, such that providing space for these vehicles within the proposed outbuilding is a reasonable requirement in this context.
16. The appellants fairly acknowledge that not all of the 5 remaining cars plus the motor bike and moped could be accommodated within the proposed outbuilding. The obvious corollary is that some of the cars would be parked in the open in any event. It is of course entirely reasonable that each member of the family should own a car for their day-to-day activities but this does not in my view extend to a reasonable expectation that these vehicles should be garaged. Presumably, therefore, it would be the classic cars/moped and the high value car owned by Mr A Borgia that would be garaged.
17. The existing garage on the site can accommodate 2 of these vehicles, leaving just one classic or high value car and the moped to be garaged in the proposed outbuilding. Even if it had been demonstrated that there is a genuine requirement for these vehicles to be garaged as a purpose incidental to the enjoyment of the dwellinghouse as such, which for the reasons set above is not the case, then the proposed garage far exceeds in size that necessary to achieve that purpose.
18. It follows from the above that the appellants have not shown the size of the garage in the proposed outbuilding to be reasonably required to accommodate the number of vehicles owned by the family and for which there might be (but as yet not demonstrated) a genuine requirement to be garaged. In these circumstances and on an objective assessment, I am not persuaded that the garage element of the proposed outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such.
19. There is then the question of the other accommodation that would be provided within the proposed outbuilding. Although the gym, changing area and store would cater for activities that may properly be described as being incidental to the use of the dwellinghouse as such, these are each relatively large spaces. I have been provided no explanation as to why that quantum of floorspace is required. Even in relation to the store, for which I have been provided with a detailed inventory of the equipment proposed to be stored there, I am not persuaded that the amount of space shown is necessary to achieve that.
20. 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 E<sup>2</sup>. Nevertheless, in this case and although considerably reduced in area from the previous version, I consider that the proposed outbuilding is of a size that is not reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse.

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

21. Moreover, the appellants have not demonstrated why the accommodation sought could not be provided within the main dwelling, at least in part. By way of example, there is no reason in principle why the office space could not be provided within the main dwelling, as it currently stands or as proposed to be extended, or within the roofspace of the existing outbuilding. The appellants describe the changing rooms, toilet and shower as necessary adjuncts to the gym and games room but again it has not been explained why facilities within the main house could not be utilised for those purposes. This reinforces my opinion that the accommodation and amount of floorspace sought within the proposed outbuilding is not reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Rather, in my view the size of the proposed outbuilding and the accommodation within it represent an unrestrained whim on the part of the appellants.
22. 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 proposed outbuilding was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

*Paul Freer*

INSPECTOR