



Appeal Decision

Site visit made on 11 November 2019

by Paul T Hocking BA MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 5th December 2019

Appeal Ref: APP/E1210/X/18/3216062

West Hayes, Burley Road, Winkton, Christchurch BH23 7AN

- 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 Barker against the decision of Christchurch Borough Council.
 - The application Ref 8/18/2392/CLP, dated 31 August 2018, was refused by notice dated 29 October 2018.
 - 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 described as: Erect 4 detached buildings to be used for purposes incidental to the enjoyment of the dwelling house by owners of the dwelling.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Since the refusal of the application Christchurch Borough Council has amalgamated to form BCP Council, which is the operational name for Bournemouth, Christchurch and Poole Council. No new considerations arise however and so I have proceeded to determine the appeal on the basis of the evidence before me.

Main Issue

3. The main issue is whether the proposed operations, namely the erection of four detached buildings, would be incidental to the enjoyment of the dwellinghouse 'West Hayes' to enable a certificate of lawfulness to be granted.

Reasons

4. There is no dispute between the parties that the buildings would meet the strictures listed within E.1 of Class E of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). However, the Council refused the application as the size and scale of the buildings were not considered to be genuinely required for purposes incidental to the enjoyment of the dwellinghouse and so considered they could not be permitted development.

5. In such cases the onus is on the appellants to demonstrate, on the balance of probabilities, that the development would be lawful at the time the application was made. The appellants have therefore provided plans including elevations for the proposed buildings. The appellants have also provided some limited information about the proposed uses for the buildings, namely as a studio, gym, workshop and painting studio and how those uses would operate, or, that they would be intended to meet the needs of the appellants but remain incidental to the enjoyment of the dwellinghouse.
6. Relevant case law¹ as well as an appeal decision² have been brought to my attention. I agree that although it is a matter for the appellants to determine what incidental purposes they wish to enjoy; an objective test of reasonableness should also be applied with respect to the specific circumstances of each individual case. This is accordingly a fact and degree assessment.
7. To this effect West Hayes is a comparatively modest chalet style bungalow set within a large garden, particularly to the rear. The evidence before me is that the dwelling has a floor-space of approximately 142 sqm and that the combined floor-space of the proposed buildings would amount to approximately 641 sqm.
8. I accept that the proposed listed uses in themselves could be regarded as incidental and that there is nothing within Class E of the GPDO that requires buildings to be of a particular scale in respect of the host dwelling. Furthermore, if the buildings were constructed and then used in breach of planning controls, that would be a subsequent matter as opposed a test before the development commences. I also accept that the appellants may not choose to erect all the buildings proposed, however, the certificate being sought is for four buildings, and so I must determine the appeal on the basis of what the application proposed.
9. The four buildings proposed amount to approximately 641 sqm of floor-space. The term incidental connotes an element of subordination in relation to the enjoyment of the dwellinghouse itself. When considered in the wider context of the planning unit I am not satisfied on the evidence before me that the proposed buildings are conducive or sensibly related to the enjoyment of the dwellinghouse, such that they can be said to be incidental, or that what is proposed amounts to a functional relationship that is normally found. Whilst the appellants highlight the resultant plot coverage, I have little evidence before me that this would be a determining factor for the purposes of my assessment.
10. In this case I have therefore not been persuaded, on the balance of probabilities, and despite the operation of uses detailed by the appellants, that the proposed buildings would be incidental to the enjoyment of the dwellinghouse. The appellants have therefore not satisfactorily discharged the burden of proof that the proposed buildings are permitted development for the purposes of the GPDO to enable a certificate of lawfulness to be granted.

¹ Emin v SSE (1989) 58 P. & C.R 416

² Appeal Ref APP/R5510/X/17/3190293

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful development 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.
12. The appeal is dismissed.

Paul T Hocking

INSPECTOR