



Appeal Decision

Inquiry held and site visit made on 12 November 2019

by Tim Belcher FCII, LLB(Hons), Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 16 December 2019

Appeal Ref: APP/L1765/X/18/3208509

**The Barn, Harmsworth Farm, Botley Road, Curbridge, Southampton,
SO30 2HB**

- The appeal is made under Section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the 1990 Act") against a refusal to grant a Certificate of Lawfulness of Proposed Development ("a CLPD").
- The appeal is made by Aaron Brown ("the Appellant") against the decision of Winchester City Council ("the Council").
- The application Ref 17/02085/LDP, dated 10 August 2017, was refused by notice dated 5 October 2017.
- The application was made under Section 192(1)(b) of the 1990 Act.
- The development for which a CLPD is sought is the proposed erection of a detached building for use as a fitness suite that is incidental to the enjoyment of the dwelling-house.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. At the Inquiry I was referred to and had regard to, the following:
 - a) The Judgement of Mrs Justice Lieven in the case of *Challenge Fencing Limited -v- Secretary of State & Elbridge Borough Council*¹.
 - b) The case of *Dyer -v- Dorset County Council*² ("Dyer").
 - c) The case of *Attorney General ex rel Sutcliffe -v- Calderdale Borough Council*³.
 - d) The case of *Methuen-Campbell -v- Walters*⁴.
 - e) The case of *Skerritts of Nottingham Limited -v- Secretary of State for the Environment, Transport & the Regions*⁵.
 - f) The case of *Lowe -v- Secretary of State*⁶.
 - g) The case of *Emin -v- Secretary of State for the Environment*⁷.
 - h) Appeal Decisions dated 30 May 2017 relating to Kixley Lane, Knowle, Solihull.

¹ [2019] EWHC 553.

² [1989] QB 346

³ [1982] 46 P&CR 399

⁴ [1979] 39 P&CR 693

⁵ [2001] QB 59 & [2000] JPL 789

⁶ [2003] EWHC 537 (Admin) & [2003] JPL 1281

⁷ [1989] 58 P&CR 416

- i) Appeal Decision dated 26 November 2013 relating to Coniston, White Shack Lane, Chandlers Cross, Rickmansworth.
2. In my Appeal Decision I will refer to:
- a) The land and buildings within the red line on drawing number 1073/100 Rev B as "the Appeal Site".
 - b) The dwelling-house within the Appeal Site as "The Barn".
 - c) The land attached to The Barn when planning permission was granted for its conversion as "the Original Garden Land".
 - d) The building sought by the Appellant as part of the appeal proposal as "the Fitness Suite".
 - e) The existing part of The Barn shown on Drawing No. 1080/102 Rev A containing, amongst other things, a swimming pool, gym and conservatory as "the Existing Fitness Suite".
 - f) The former horse riding area within which the Fitness Suite would be sited as "the Former Manege".
 - g) The CLPD application, the subject of this appeal, as "the First CLPD application".
 - h) The CLPD application dated 11 December 2018 as "the Second CLPD application".

Relevant Background Matters

- 3. In May 2001 planning permission was granted to convert an agricultural barn on the Appeal Site to a dwelling-house, namely The Barn. The land and buildings to which that permission relates did not include the Former Manege.
- 4. In about 2008 the Existing Fitness Suite was constructed.
- 5. In June 2013 the Appellant purchased the Appeal Site and adjoining land including the Former Manege.
- 6. In June 2014 the Council granted planning permission to change the use of agricultural land abutting part of the Original Garden Land to residential garden ("the 2014 Garden Extension"). The Council imposed a condition ("Condition 2") removing permitted development rights within Class E in respect of the 2014 Garden Extension. The planning permission also required that the 2014 Garden Extension was to be used in connection with the domestic use of The Barn.

My comment: In my view the Council must have considered that the land forming the 2014 Garden Extension would be within the curtilage of The Barn as Class E permitted development rights only apply to land within the curtilage of a dwelling-house.
- 7. The Officer's Report dealing with the 2014 Garden Extension application noted that there was children's play equipment within the site.
- 8. In December 2014 the Council refused to discharge Condition 2.

9. In July 2015 Condition 2 was discharged on appeal. The Inspector noted at her site visit that the 2014 Garden Extension land contained a substantial climbing frame.
10. In September 2016 the Council refused planning permission to:
 - a) Demolish the Existing Fitness Suite.
 - b) Erect an extension to The Barn to incorporate enlarged habitable spaces.
 - c) Erect new garages, pool, gym and ancillary spaces.
 - d) Construct a tennis court with chain link fencing around.
 - e) Adapt the existing entrances.

Part of the proposed development would have been on the Former Manege.

11. In August 2017 the Council granted planning permission for the relocation of the Former Manege to a position within the land comprising the 2014 Garden Extension and the change of use of the Former Manege to residential garden. I will refer to the permitted manege as "the New Manege".
12. Following the grant of the August 2017 planning permission the New Manege has been constructed although I understand that materials for its finished surface are awaited. Part of the fencing around the Former Manege was removed prior to the First CLPD Application being made. As at the date of the First CLPD Application the Former Manege could be accessed without physical hinderance from the Original Garden Land and the 2014 Garden Extension.
13. In August 2017, when the First CLPD Application was made, the Appellant's agent stated that the Former Manege had become garden. I am aware that the sand/grit surface had not been removed. However, no condition was imposed regarding how the Former Manege was to be landscaped or any timescale imposed for removing its surface. There is no evidence before me that at the time the First CLPD Application was made the Former Manege had not been incorporated into the garden of The Barn and used as such.
14. The First CLPD application was refused in October 2017 on the basis that the land comprising the Former Manege was not land within the curtilage of The Barn and therefore Class E permitted development rights did not apply to it.
15. The Second CLPD Application was made to the Council in December 2017.
16. In January 2018 planning permission was granted for:
 - a) A two-storey kitchen extension to The Barn.
 - b) The erection of a "C" shaped stable building following removal of the existing equestrian buildings.
17. In March 2018 the Council sought further information in respect of the Second CLPD Application and established that:
 - a) There were two adults and three children living within The Barn.
 - b) The surface of the Former Manege had not been removed.
 - c) The Former Manege had not been seeded, landscaped or planted.

- d) The Former Manege was not fenced off from the Original Garden Land or the 2014 Garden Extension.
 - e) The Former Manege was not being used for storage purposes.
 - f) The Fitness Suite would be equipped with standard fitness equipment including rowing machine, exercise bike, cross-trainer, treadmill, fitness ball, medicine ball and free weights.
18. In April 2018 the Council pointed out that The Barn already had a gym within the Existing Fitness Suite and queried whether the Fitness Suite was reasonably required by the Appellant. The Council were aware of the September 2016 refusal to demolish the Existing Fitness Suite.
19. The Appellant confirmed that:
- a) He wanted more space within the gym than was provided within the Existing Fitness Suite.
 - b) The Fitness Suite was genuinely and reasonably required.
20. The Second CLPD Application was refused on 18 April 2018 for:
- a) The same reason as the First CLPD Application.
 - b) The Fitness Suite was not reasonably required for purposes incidental to the enjoyment of The Barn.
21. In October 2018 the Council granted planning permission for the erection of a replacement garage following the removal of an existing garage building and the Existing Fitness Suite.
22. In March 2019 the Council granted planning permission for the erection of a replacement garage following the removal of an existing garage building and the Existing Fitness Suite. This was an alternative scheme to the October 2018 permitted scheme as the Appellant had acquired some additional land which allowed him to site the replacement garage in a slightly different position

Is the Appeal Decision Limited Solely to the Council's Reason for Refusal of the First CLPD Application?

23. I have considered:
- a) Paragraphs 5 to 8 of the Appellant's Opening Submissions.
 - b) Paragraphs 17 to 24 of the Council's Opening Submissions.
24. I was not referred to any judicial authority concerning this issue. I am of the view that my determination is not limited to the sole reason for refusal of the First CLPD Application. The Council are relying on both reasons as set out in paragraph 20 above as to why the Fitness Suite would not be permitted development. The Appellant has been aware that the Council would rely on both these reasons since before the appeal was made against the refusal of the First CLPD Application. The Appellant confirmed that he had prepared for the Inquiry on the basis of dealing with both reasons for refusal of the Second CLPD Application.

25. I consider that the decision maker in an appeal such as this is determining whether the Council's decision to refuse the First CLPD Application was well-founded not whether the Council's reasons for refusal were substantiated.

Main Issues

26. I consider the main issues in this case are whether:

- a) The Former Manege fell within the curtilage of The Barn at the date of the application for the First CLPD Application?
- b) The Fitness Suite would be for a purpose incidental to the reasonable enjoyment of The Barn?

Reasons – The Curtilage Issue

27. I have explained that the Former Manege has been granted planning permission for use as residential garden and has been used as such. I note that in the case of Dyer LJ Nourse in the Court of Appeal was of the view that the curtilage of a dwelling-house would certainly includes its garden.
28. At the time of my site visit there was extensive levelling and structural landscaping works being carried out on the 2014 Garden Extension. I have already explained above that at the date of the First CLPD Application the Former Manege was accessible from the Original Garden Land and the 2014 Garden Extension. Further, part of the Former Manege is closer to The Barn than parts of the Original Garden Land. Further still, the Former Manege does not extend as far from The Barn as part of the 2014 Garden Extension.
29. I am of the view that the Former Manege serves the purpose of The Barn because it is part and parcel of its rear garden. The fact that the Original Garden Land and the 2014 Garden Extension would of themselves provided a substantial rear garden does not mean that adding further garden land in the form of the Former Manege is not necessary or useful. The Barn is a very large dwelling-house and the grant of planning permission for the 2014 Garden Extension and the change of use of the Former Manege to residential garden provides, in my assessment, an area of garden that is commensurate with the size and status of The Barn.
30. I am aware of the view that the Former Manege may have fallen outside the curtilage of The Barn because it was fenced off at one time from the Original Garden Land and the 2014 Garden Extension. Even if the Former Manege historically fell outside the curtilage of the Barn I am satisfied that the grant of planning permission to use it as garden; the removal of part of the fencing around it and its use as garden means that it was, at the date of the First CLPD Application, part of the curtilage of The Barn.
31. I therefore conclude, as a matter of fact and degree, that the Former Manege was within the curtilage of The Barn at the date of the application for the First CLPD.

Reasons – Reasonable Use Issue

32. If a building is erected within the curtilage of a dwelling-house and complies with the size restrictions in Class E its use must be for a purpose incidental to the reasonable enjoyment of the dwelling-house if it is to be considered

permitted development under Class E. In this case the Fitness Suite would initially be used by the two adults living at The Barn and their eldest child.

33. I do not consider that the Fitness Suite in isolation (which would have a floor area of 70 square metres) is of such a size as to be considered unreasonable for an incidental gym use. The Appellant explained that he currently used for gym purposes about 46 square metres within the Existing Fitness Suite and that in his judgement he needed the additional space.
34. However, at the date of the application the Appellant had the Existing Fitness Suite available for his and his family's use. Whilst I know that there are planning permissions which allows the Existing Fitness Suite to be demolished as explained in paragraphs 21 and 22 above the Existing Fitness Suite has not been demolished and there is no mechanism currently in place to ensure that it would be demolished prior to building the Fitness Suite. Further, the Appellant confirmed that he did not need both the Existing Fitness Suite and the Fitness Suite to meet his and his family's reasonable needs for a gym at The Barn.
35. Accordingly, I conclude that the Fitness Suite would not be for a purpose incidental to the reasonable enjoyment of The Barn.

Conclusion

36. For the reasons given above I conclude that the Council's refusal of the CLPD in respect of the proposed erection of a detached building for use as a fitness suite was well-founded and that the appeal should fail. Accordingly, I will exercise the powers transferred to me in Section 195(3) of the 1990 Act and dismiss the appeal.

Formal Decision

37. The appeal is dismissed.

Tim Belcher

Inspector

APPEARANCES

FOR THE APPELLANT

Martin Edwards of Counsel

Instructed by Robert Tutton - Director of
Robert Tutton Town Planning Consultants
Limited

He called:

Aaron Brown

The Appellant

Robert Tutton BSc(Hons), MRTPI

FOR THE COUNCIL

Jack Parker of Counsel

Instructed by the Solicitor to the Council

He called:

Nicola Clayton BSc(Hons), DipTP

Senior Planning Officer