
Appeal Decision

Site visit made on 23 December 2019

by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 20th January 2020

Appeal Ref : APP/W1525/C/19/3227243

Land at Elmcote, Main Road, Bicknacre, Chelmsford, Essex, CM3 4HW

- The appeal is made under section 174 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991.
- The appeal is made by Mr C Attwell against an enforcement notice issued by Chelmsford City Council.
- The notice was issued on 21 May 2018.
- The breach of planning control as alleged in the notice is without planning permission the construction of a building (shown outlined in blue at the approximate location on the plan attached to the notice).
- The requirements of the notice are i. demolish the building and break up the foundations, ii. remove from the land any debris and waste material resulting from the actions taken at step i.
- The period for compliance with the requirements is three months.
- The appeal is proceeding on the grounds set out in section 174(2) (a), (c) and (g) of the Town and Country Planning Act 1990 as amended.

Summary of Decision: the appeal succeeds in part and the enforcement notice is upheld as varied in the terms set out in the Formal Decision.

Ground (c)

1. This ground of appeal is that the matters alleged in the notice do not constitute a breach of planning control. The burden of proof rests upon the Appellant and the test of evidence is the balance of probabilities.
2. A breach of planning control comprises the carrying out of development without the required planning permission. The meaning of development includes the carrying out of building, engineering, mining or other operations in, on, over or under land. Certain development benefits from permitted development rights by virtue of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(the GPDO).
3. The Appellant argues that the building the subject of the notice has permitted development rights by virtue of Class E of Schedule 2 Part 1 of the GPDO.
4. Class E relates to 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.
5. The point at issue between the parties is whether the building is required for a purpose incidental to the enjoyment of the dwellinghouse. There is no disagreement between the parties that the building is located within the

- curtilage of the dwellinghouse and satisfies all of the other conditions and limitations of Class E and I have no reason to conclude otherwise.
6. In considering whether the building is required for a purpose incidental to the enjoyment of the dwellinghouse it is necessary first of all to consider the purpose for the building and its incidental quality in relation to the enjoyment of the dwelling. Secondly, it is necessary to consider whether the building is genuinely and reasonably required in order to accommodate the use or activities and consequently achieve that purpose. It is necessary to apply objective reasonableness in consideration of all of the relevant facts and circumstances. Size alone is not determinative.
 7. The building is single storey and occupies a substantial part of the side garden. It contains a home office, snooker room with bar area, gym, shower room and games room. I note that a sauna and steam room have been removed.
 8. The Appellant says that the outbuilding is required to serve the needs of his disabled son to allow him to strengthen his body and carry out his model aircraft hobby. He says the building also provides a home office use for which there is no space in the main dwelling. I consider that each use is capable of being for a purpose incidental to the enjoyment of a dwellinghouse. A shower room whilst a primary living activity may be considered incidental to a gym use given the distance from the main dwelling.
 9. All of the rooms within the buildings are of a relatively significant size. The snooker and games rooms in particular are large with much circulation space. The footprint of the building exceeds the overall floor area of the main dwelling. Whilst size is not determinative as a matter of fact and degree I find the dimensions of the outbuilding to be significant.
 10. There is little evidence before me as to why the particular uses of this scale are genuinely and reasonably required. Whilst I do not doubt the benefits of these uses I am not persuaded that the scale of the uses is genuinely and reasonably required. The Appellant has not shown that the floorspace attributed to each use is genuinely and reasonably required or necessary in order to accommodate each use.
 11. I consider that on the evidence before me the purposes of the building can reasonably be regarded as incidental but that the Appellant has not satisfied the burden of proof that rests upon him in demonstrating that the building is genuinely and reasonably required in order to accommodate those uses.
 12. My attention is drawn to a unilateral undertaking that the Appellant has submitted to the Council restricting the Appellant from selling, transferring or otherwise disposing of the building separately of the main house or vice versa without the express consent of the Council. The document does not alter my conclusions.
 13. For the reasons given above I cannot conclude that the building benefits from permitted development rights by virtue of Class E and it requires planning permission. The Appellant has not satisfied the burden of proof that rests firmly upon him in this ground of appeal.
 14. This ground of appeal does not succeed.

Ground (a) appeal and deemed application

Main Issue

15. The main issue in the determination of this appeal is the effect of the development on the character and appearance of the host dwelling and the surrounding area.
16. The development plan (including the Chelmsford City Council Core Strategy and Development Plan Document (the Core Strategy)) reflects the National Planning Policy Framework (the Framework) in seeking to ensure that development respects its setting. Policy DC2 seeks to protect the countryside beyond the Green Belt for its intrinsic character and beauty. Policy DC45 of the Core Strategy seeks to achieve high quality development and provides that permission will be granted for new buildings provided that the siting, scale, form, massing, materials and details would have an appropriate visual relationship with the layout, scale, form and character and appearance of the surrounding area. I have also taken into account as a material planning consideration the emerging local plan which is at an advanced stage of preparation.
17. The appeal site sits in a large rural plot. At the front of the site facing the highway is a modest residential dwelling known as 'Elmcote' and located to its rear are a number of large outbuildings including greenhouses, garages and sheds, a workshop and open agricultural land exists beyond. The building the subject of the notice is located within the garden area to the south side of the dwelling.
18. The site lies less than a kilometre from the village of Bicknacre. It is located within a sporadic ribbon of development. The surrounding area is characterised by its countryside setting and its openness. The Appellant emphasises that the site is a residential garden and questions the application of the development plan to the site. But the site is shown in the development plan as being within the countryside and the development plan applies accordingly.
19. Whilst the unauthorised building is partly screened by hedges from some viewpoints it is nevertheless visible from the highway. The Appellant suggests that its appearance is in keeping with the collection of buildings and commercial uses in the locality but I disagree. Its size creates a dominant visual feature in a domestic setting. It is out of keeping in its setting. It is larger than other outbuildings on the site and does not appear subservient to the main dwelling. It introduces significant built form which due to its size and scale causes undue harm to the intrinsic open character and beauty of the surrounding area.
20. I have taken into account the personal family circumstances and the required purpose of the building. I do not doubt the benefits of a separate building but I am not satisfied that the benefits could not be achieved without the identified harm by reason of the size and scale of the building.
21. I conclude that the development causes undue harm to the character and appearance of the main dwelling and the surrounding area by virtue of its size and scale contrary to relevant policies in the development plan (including policy DC45) and the Framework. The benefits before me in support of the

development are not sufficient to outweigh the conflict with the development plan.

22. My attention is drawn to building control documentation but this is covered by a separate legislative regime and does not affect the need for planning permission. The Appellant says that the Council did not state that the building required planning permission when they were originally consulted but the Council is not bound by informal advice and I have considered the development on its own particular merits. The length of time taken by the Council in serving a notice is not indicative of the extent of harm caused by the development. I have taken into account other development in the locality but development similar to the outbuilding the subject of this appeal is not so widespread as to be characteristic of the area.
23. I have considered whether conditions could overcome the identified harm. I have taken into account the Planning Practice Guidance. No conditions are suggested by the parties and I do consider that any would overcome the identified harm. The Appellant refers to the signing of a unilateral undertaking but this does not alter my findings as to the identified harm to the character and appearance of the main dwelling and the surrounding area.
24. I note the comments from a third party. But the matters raised are not relevant to this appeal and I have not taken them into account.
25. For the reasons given above I conclude that the appeal should not succeed. I shall refuse to grant planning permission in whole or part for the development already carried out.

Ground (g) appeal

26. This ground of appeal is that the period for compliance with the requirements of the notice is unreasonably short. The notice provides for a three month compliance period.
27. The Appellant argues that one year would be a reasonable period for compliance. He says that contractors are very busy and are unlikely to be available to complete the works in a three month period.
28. I have balanced competing interests – the interest of the Appellant in developing land and the public interest in bringing to an end the identified harm without unnecessary delay. I have balanced equality issues against all other material considerations. I find that five months would strike an appropriate balance and take into account the personal circumstances before me. It would be proportionate so as not to violate individual rights and take appropriate account of the particular personal circumstances in this case.
29. For the reasons given I conclude that a reasonable period for compliance would be five months and I am varying the enforcement notice accordingly prior to upholding it. The appeal under ground (g) succeeds to that extent.

Formal Decision

30. The appeal is allowed on ground (g) and it is directed that the enforcement notice be varied by the deletion of the three month compliance period and the substitution of a five month compliance period. Subject to this variation the enforcement notice is upheld. Planning permission is refused on the application deemed to have been made under section 177(5) of the 1990 Act as amended.

S. Prail

Inspector