



Appeal Decision

Site visit made on 10 December 2019

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 12th February 2020

Appeal Ref: APP/P0240/X/19/3226041

Well Cottage, Featherbed Lane, Chalgrave, Dunstable LU5 6JL

- 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 David Westcott against the decision of Central Bedfordshire Council.
 - The application ref. CB/17/02914/LDCP, dated 13 June 2017, was refused by notice dated 31 July 2018.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate of lawful use or development is sought is the erection of an outbuilding.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs has been made by the appellant against the Council. This application is the subject of a separate Decision.

Preliminary matters

3. For the avoidance of doubt, I should explain that the planning merits of the existing development are not relevant, and they are not therefore an issue for me to consider in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background matters

4. The appeal site is in an isolated rural location about 1.5 kilometres south-east of Toddington. The buildings on the extensive site comprise the main two-storey house, which I understand has 3 reception rooms and four bedrooms, and ranges of outbuildings forming three sides of a courtyard immediately to the south. In views from the road the site and buildings are largely concealed by conifer hedging, tall gates and the backs of outbuildings.

Reasons

5. In an appeal against refusal to grant a LDC the main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-

founded. In that regard the principal question is whether at the date of application for the LDC, the proposed development would have been lawful in terms of Class E of Part 1 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

6. Subject to various exclusions Class E includes permission for:
The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such.
7. The proposed building would stand close to the western flank of the house. The maximum overall plan dimensions would be about 25.5 metres by 15.5 metres. It would have a flat roof, pitched around the perimeter, with a maximum roof height of 4 metres, and an eaves height of 2.48 metres. It would provide a swimming pool, games room, gymnasium, entertainment room and bar, music room, art room, and sewing room, as well as 2 shower rooms, a changing room/WC, several storage rooms, and a plant room. These spaces would be accessible from a wide L-shaped corridor connecting the two principal entrances – the main entrance from the courtyard, and a subsidiary entrance close to the flank of the house.
8. The proposed building would not exceed the maximum height dimensions set out in paragraph E.1 of Class E and would not be subject to any of the other exclusions set out in paragraphs E.1, E2 and E3.
9. It was held in the High Court case of *Emin*¹ that the overriding factor in deciding the question as to whether the uses of a proposed building can properly be regarded as incidental to the enjoyment of the dwellinghouse must concern the incidental use, which in that context must be a use which occurs together with something else but nevertheless remains at all times subordinate to it. Furthermore, the correct approach should have regard to the proposed use and to the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse. The relevant test cannot solely be made by reference to the comparative sizes of the proposed building and the existing dwelling. However, these factors may not be irrelevant.
10. The aim should be to identify the purpose and the incidental quality in relation to enjoyment of the dwelling, and answer the question of whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use and achieve the purpose and incidental quality in relation to enjoyment of the dwelling.
11. The appellant argues that his intention is to build a leisure annex for various purposes – for him to take regular exercise in the pool and gymnasium, to entertain family and friends, provide a dedicated space for sewing in a light and airy room, and to revive interests in diverse artistic, craft and musical pursuits. Furthermore there would be a games room, and an entertainment room for parties, and including cinema facilities.
12. The pool is of reasonable dimensions for personal/domestic use, given that such a size is reasonably necessary to take effective exercise, but in my

¹ *John Emin v the Secretary of State for the Environment and Mid-Sussex District Council* [1989] JPL 909.

opinion the provision of two shower/changing cubicles and a further changing space goes beyond what might reasonably be needed for domestic use.

13. The Council have calculated area for the various spaces, and these have not been disputed. The music room has an area of over 21 square metres and has two storage areas in addition totalling about 8 square metres. The art room and sewing room have areas of about 16.5 and 11 square metres respectively, and each has an attached store. It appears to me that the music room, the art room and associated stores would be of very generous size indeed for ancillary domestic use, as would the 27 square metre games room.
14. The proposed entertainment/bar area has an area of some 64 square metres and can be connected to the 27 square metre games room by opening concertina doors. While it is reasonable to expect to entertain family and friends and hold parties occasionally, accommodation on such a scale is unlikely to be needed except for a large reception, when it might be expected that temporary accommodation such as a marquee might be used, or an external venue hired.
15. The wide L-shaped corridor that connects the two principal entrances of the building and the internal spaces is of a scale that would be appropriate for an institutional or public building and cannot be regarded as reasonably required for a purpose incidental to enjoyment of the dwelling.
16. The appellant argues that there is no logical relationship between size and whether a use can be considered as incidental, and no rational method of deriving such a relationship. I accept that this is a judgement of fact and degree. It appears to me that apart from the swimming pool, all other elements of the building, including the extensive storage spaces and corridors, are of a scale that cannot be regarded as subordinate in relation to the enjoyment of the dwellinghouse as such.
17. The appellant states that the house is very small for the size of the plot, and that it is cramped, but does not otherwise explain why it is necessary for uses that would usually be expected to occur in the house – such as music, sewing, or holding parties – require quite extensive ancillary space, particularly at the scale envisaged.
18. It appears to me the appellant has put forward a catalogue of activities - characterised as 'aspirations' - with a physical space ascribed to each. Apart from the swimming pool, and possibly the sewing room each space is of a scale that is greater than might be expected to be incidental to the use of the dwelling. The cumulative effect, when translated into a building, is much in excess of what might reasonably be required in association with a family house. Little account has been taken of activities that may already occur within the dwelling, particularly entertainment of family and friends, or justification of the need to accommodate them outside the house itself. Nor is there any significant account of how the extensive ranges of existing outbuildings are used. There is insufficient evidence to show that in the balance of probabilities a building of this size is reasonably and genuinely required for the uses stated. In my view it was not egregious of the Council to liken the proposed building to a community entertainment centre.
19. With regard to a distinction made by the judge in *Emin*, I consider this is a case where the wish for additional space has been driven to a significant extent by

unrestrained whim, rather than the reasonable aspirations of the appellant for accommodation that is sensibly related to the enjoyment of the dwelling.

20. Overall, as a matter of fact and degree I consider the proposed outbuilding cannot be regarded as reasonably required or necessary for purposes that are incidental to the enjoyment of the dwellinghouse as such. On the balance of probabilities, at the date of application for the LDC, the proposed development would not have been lawful in terms of Class E of Part 1 to Schedule 2 of the GPDO.

Conclusions

21. 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 erection of an outbuilding at Well Cottage, Featherbed Lane, Chalgrave, Dunstable LU5 6JL 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.

Stephen Brown

INSPECTOR