



Appeal Decision

Site visit made on 25 February 2020

by Thomas Shields DipURP MA MRTPI

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

Decision date: 02 March 2020

Appeal Ref: APP/J3720/X/19/3237267

Lighthorne Rough, Moreton Morrell, Warwick, CV35 9DB

- 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 Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Robin Etherington and Vicky Parfett against the decision of the Stratford-on-Avon District Council.
- The application Ref 19/01330/LDP, dated 10 May 2019, was refused by notice dated 5 July 2019.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is demolition of existing garage and garden store, and construction of two outbuildings incidental and ancillary to the enjoyment of the existing dwelling, with changes to hard surfaces.

Summary of Decision: The appeal is allowed in part and a certificate of lawful use or development is issued in the terms set out below in the formal decision. The appeal is otherwise dismissed.

Preliminary Matters

1. The relevant date for determining whether the development subject of the appeal would be lawful is the date of the application, 10 May 2019.
2. In order for a LDC to be granted under s192 it is necessary for the appellant to demonstrate, on the balance of probabilities, that the development would be lawful. Matters such as planning policies and the effect of the proposals on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Appeal Site and Proposed Development

3. The appeal property is a large country house created from the sub-division of a larger property in the early 1980's. It sits set back from the highway and within extensive grounds, part of which forms the appeal property's curtilage, the area of which is not in dispute. The proposed development is as described in the final bullet point in the above banner heading.

Main Issue

4. The main issue is whether the Council's decision not to issue an LDC was well founded.
5. There is no dispute that demolition of the existing buildings and alterations to hard surfaces as proposed would be lawful and I have no reason to disagree. As such, the appeal turns on whether the proposed two outbuildings would

benefit from the planning permission¹ provided by Article 3 and Class E(a), Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

6. Class E(a) permits 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, or the maintenance, improvement or other alteration of such a building or enclosure;

7. The Council argues that neither of the two proposed outbuildings would be Class E(a) permitted development because of their excessive size in the context of the purposes for which they are said to be required. Additionally, that one of the buildings would fail to meet the limitation of Class E(a) at E.1(c), which excludes buildings where –

any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

Whether required for purposes incidental to the enjoyment of the dwelling house

8. Both parties refer to the judgment in *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416. It establishes that the term “incidental” connotes an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. Also, in applying Class E the term “required” should be interpreted as “reasonably required” rather than the “unrestrained whim” of the occupier. With regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important factor although not conclusive by itself.
9. The critical test to be applied is firstly; whether the uses of the proposed outbuildings, in the context of the planning unit, are intended to be and would remain ancillary and subordinate to the main use of the dwellinghouse, and secondly; whether the proposed outbuildings are “reasonably required” in order to accommodate those uses.
10. Building 1 (144m²) would measure 18m x 8m x 2.5(height) and would be sub-divided internally to form a three bay garage (10m x 8m), a gymnasium (8m x 4m) and an art studio (8m x 4m).
11. Building 2 (112m²) would be located 5m away from Building 1 and would measure 14m x 8m x 2.5m(height). It would be subdivided internally to form a snooker room (10m x 8m) and an office (8m x 4m).
12. No kitchens, bathrooms or bedrooms are proposed which would ordinarily be classed as primary living accommodation and not incidental. Moreover, I am satisfied that the stated intended uses of the outbuildings are uses that are capable of being ordinarily incidental to the enjoyment of a dwellinghouse, and there is no argument by the Council that they could not be so.
13. The Council refers to the 30m distance between the appeal buildings and the main house. However, I do not consider that is significant in the context of the

¹ Generally referred to as “permitted development”

large house and the planning unit. They also refer to the combined scale and size of the two buildings (256m²). Taken together the combined footprint of the two buildings would be larger than the dwellinghouse. However, I note that the proposed demolition of the existing buildings (114m²) would result in an overall net increase of 142m². Having regard to the layout drawing, and in the context of the substantial size of the dwellinghouse and planning unit they would be significantly less than the 50% maximum for Class E buildings.

Building 1

14. The appellant's supporting calculations² as to intended uses and the spaces needed for them sets out that two of the bays in the garage would be used for parking and the third for housing a ride on mower, bicycles, golf clubs and trolleys, garden trailer, hand mower, chainsaw and other equipment. The garage would also house a workbench across the rear wall. The gymnasium would house the various listed items of equipment and provide floor space for exercise mats and circulation. The hobby-based art studio would provide space for storage units along both side walls, a work-table and an area for working.
15. Taken in isolation the building could be said to have a large footprint. However, I consider that the quantified areas specified for the particular uses and facilities/equipment in Building 1 are of a reasonable domestic scale and are not excessive for those purposes. As a matter of fact and degree I find that the size and scale of the outbuilding is not disproportionate to the intended uses it would accommodate and is thus "reasonably required". On this basis I come to the conclusion that Building 1 would be permitted development.

Building 2

16. The appellants calculations as to the spaces needed for a snooker room (80m²) and office (32m²) are also set out in Appendix 2. Taking the snooker room first, it is stated that the area needed for the snooker table is 7m x 5m. However, that is the generally recognised standard space required for a full-sized snooker table including clearance space around it using full sized snooker cues. At 35m² it would leave a remaining 45m² of floor space (more than half of the room space). Even allowing for proposed seating space and the relaxation area, I consider that there would be an excessive over-provision of space for the purposes specified.
17. Turning to the proposed office; the space stated as required for the specified equipment and furniture falls considerably short of the total floor space (32m²). Even allowing for the relaxation area and circulation space, it seems to me that the overall 32m² area is excessive and hence unjustified. I am reinforced in this view given that its purpose would be as a home office used by each appellant typically for only two days per week.
18. For these reasons I find that Building 2 would not be reasonably required for its stated purposes and hence would not fall within Class E(a).

Whether limitation at E.1(c) exceeded

19. This issue relates solely to Building 2. On the basis of the submitted evidence and from my own observations during my visit to the appeal site. I agree with the parties that the principal elevation of the house is that which faces south.

² Appellants' Statement of Case, Appendix 3

20. The Council argue that the principal elevation is staggered across the front of an adjoining side element (since removed) which was set back behind the existing forward most part of the frontage. In support of their case, their evidence includes a plan³ of the 'existing' floor plans (81/00193/FUL) from when the building was created through subdivision. That evidence is not inconsistent with the remnant material and outline of a former building I saw during my visit.
21. The appellants' case is that the set-back element was not part of the original⁴ dwellinghouse but a later addition. Their evidence in support of that is the approved existing floor plans⁵ for an LDC issued in 2011 for a proposed extension, for which the Council accepted then that the principal elevation was the forward most part of the frontage as existing both then and currently.
22. However, the 2011 LDC plans do not provide evidence that the set-back element, referred to by the Council, was not part of the original dwellinghouse; it clearly existed as shown on the 1981 plans and which predate the 2011 plans. The burden of proof is on the appellants to demonstrate that the set-back element was not part of the original dwellinghouse. Having regard to all the evidence before me I find that they have failed to do so. As such, I conclude on the balance of probability that the set-back element formed part of the original dwellinghouse.
23. The Council's interpretation of the principal elevation in 2011 is not binding on this appeal decision. Given my findings above, and taking account of the TG for Class E, it is clear that the staggered red line indicated on the Council's plan³ is the principal elevation for the purposes of this appeal. As such, it follows that the southern end of Building 2 would project forward of the principal elevation and thus would exceed the limitation at Class E.1(c). It would not therefore be permitted development.

Other matters

24. The Council's approach in determining the LDC application, and as amplified in their evidence, relies in part on their concern that the claimed intended purposes are not genuine. In doing so they took account of the appellant's earlier applications for LDCs. However, that approach is flawed. The Council has powers to investigate and take enforcement action in the event that an outbuilding is erected and used for purposes which are a breach of planning control. Hence, fear that a proposed Class E building has the potential to be altered or used for some other purpose than applied for does not form a sound basis for refusal. Accordingly, I have not taken this part of the Council's evidence into account in reaching my decision.

Conclusions

25. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC in respect of the demolition of existing garage and garden store, and construction of an outbuilding (Building 1 - garage, gymnasium, art studio) incidental and ancillary to the enjoyment of the existing dwelling, with changes to hard surfaces was not well-founded and that

³ Council's Statement of Case, Appendix 1

⁴ Means a building as it existed on 1 July 1948 where it was built before that date, and as it was built if built after that date

⁵ Appellants' Statement of Case, Appendix 2

the appeal should succeed in these respects alone. I will exercise the powers transferred to me under section 195(2) of the Act in that regard.

26. However, I further conclude on the same basis that the Council's decision not to grant a LDC in respect of the erection of an outbuilding (Building 2 - snooker room and office) was well-founded and that the appeal should fail in that respect. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act in that regard.

Formal Decision

27. The appeal is allowed in part, insofar as it relates to the demolition of existing garage and garden store, and construction of an outbuilding (Building 1 - garage, gymnasium, art studio) with changes to hard surfaces at Lighthorne Rough, Moreton Morrell, but is dismissed insofar as it relates to the construction of an outbuilding (Building 2 – snooker room and office). Attached to this decision is a certificate of lawful use or development describing the existing operations which are considered to be lawful.

Thomas Shields

INSPECTOR



Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 May 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed demolition of existing garage and garden store and the construction of an outbuilding (Building 1 – garage, gymnasium, art studio) with changes to hard surfaces would have been development that benefitted from deemed planning permission pursuant to Article 3, and Class B of Part 11 and Classes E(a) and F of Part 1, to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Thomas Shields

Inspector

Date: 02 March 2020

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First Schedule

Demolition of existing garage and garden store and the construction of an outbuilding (Building 1 – garage, gymnasium, art studio) with changes to hard surfaces.

Second Schedule

Land at Lighthorne Rough, Moreton Morrell, Warwick, CV35 9DB.

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 02 March 2020

by Thomas Shields DipURP MA MRTPI

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