



Appeal Decision

Site visit made on 26 February 2020

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 April 2020

Appeal Ref: APP/X0360/X/19/3233823

Hermitage Cottage, Matson Drive, Remenham RG9 3HB

- 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 Leeming against the decision of Wokingham Borough Council.
 - The application Ref 183249, dated 26 November 2018, was refused by notice dated 18 January 2019.
 - 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 the erection of outbuilding compliant with Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 2015.
-

Decision

1. The appeal is dismissed.

Background

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support his case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. No account can therefore be taken of concerns raised by neighbours with regard to the impact of the outbuilding on their living conditions.
3. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.
4. The application is for a detached outbuilding to be sited to the rear of the two storey semi-detached dwelling. There is a small area of hardstanding to the rear of the dwelling at ground floor level, and the land then rises up steeply, forming a bank. The outbuilding would be sited just below the top of the bank, and due to the slope of the land, would be supported on foundations and stilts, with an external staircase giving access to it from the garden level at the rear of the house.
5. The Council has refused the application as it considers that the works include engineering operations that are outside the scope of those that are reasonably necessary or permitted by Class E of the GPDO; the outbuilding would be sited

outside the curtilage of the dwelling; and it would include raised platforms more than 0.3m above ground level.

Reasons

Engineering operations

6. Class E of Schedule 2 Part 1 of the GPDO¹ gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. Section 55 of the Act defines development, and includes 'engineering...operations'. In paragraph 2.(1) of the GPDO, building is defined as 'any structure or erection...'.
7. The parties agree that the proposal includes an engineering operation, but the Council asserts that the supporting structure for the outbuilding is a separate engineering operation, that would not ordinarily be anticipated for an outbuilding, rather than being part and parcel of the building. It would therefore be development and would not be permitted by Schedule 2 of the GPDO.
8. Due to the slope of the land, the engineering works involved in building the supporting structure and foundations are clearly necessary, and are part of the building. It is well established by case law that the relevant question is not whether the engineering works are part and parcel of the construction of the outbuilding, but whether the engineering works constitute a separate activity of substance. The supporting structure would be substantial in its own right, and significantly greater in scale than the foundations that would normally be expected to support a Class E outbuilding.
9. There is little information regarding the extent of construction works necessary for the supporting structure, but they are likely to have planning impacts due to their scale. The supporting structure would also inevitably have a significant visual impact on the appearance of the site. As a result, it would be different in character than the foundations which would normally support a Class E outbuilding. I therefore find that the development would involve two separate activities of substance, and that one is not merely ancillary to the other. The development would involve an engineering operation as a separate activity of substance, which requires planning permission in its own right.

Curtilage

10. The Council argues that the building, being partially located on the steep bank to the rear of the property, would fall outside the curtilage of the dwelling, and would not therefore be permitted development under Class E. Whether something falls within a curtilage is a question of fact and degree and is primarily a matter for the decision-maker.
11. The Technical Guidance² states that the definition of curtilage is understood to be 'land which forms part and parcel with the house. Usually, it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area'.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

² Permitted development rights for householders: Technical Guidance September 2019

12. Case law indicates that the curtilage connotes a piece of land attached to a dwelling house and forming one enclosure with it. There are three primary tests to be considered, which are physical layout, ownership (past and present), and use or function (past and present). In terms of physical layout, it is located in close proximity to the rear of the dwelling and encloses the rear yard. Due to the change in levels and lack of an easy access route to the higher part of the ground, it is difficult to access. There is no question that the land has been within the same ownership as the rest of the property.
13. Turning to its use or function, there is some evidence in the form of a statutory declaration that the land has been used on occasions for recreation associated with the dwelling, but due to its gradient and difficulties accessing it, I am doubtful whether the use has been regular. I note that the statutory declaration refers to the 'rear curtilage' which is indicated on the attached plan to include the entire area to the rear of the house, rather than just the sloping bank. I am also mindful that the area has recently been cleared of trees, which are likely to have hindered the access to it.
14. The parties agree that its steep gradient is likely to be due to works to excavate the site to build the house. Its function is to enclose the property and provide a transition in levels between the house, the land in which it sits, and the adjacent property to the rear. As such, it forms one enclosure with the dwellinghouse. I do not therefore agree with the Council that the land does not serve any purpose, simply because it is difficult to access. It is relevant that there is a fence on the top of the slope, which separates the site from the adjacent property.
15. I therefore conclude, on the evidence before me, that the outbuilding would be within the curtilage of the dwelling.

Raised platform

16. Paragraph E.1.(h) sets out a limitation to Class E permitted development if it includes the construction or provision of a verandah, balcony or raised platform. Paragraph I Interpretation of Part 1, sets out that for the purposes of Part 1, 'raised' in relation to a platform means a platform with a height greater than 0.3 metres.
17. The Council considers that the external staircase consists of steps that are each a raised platform, except for the first step, presumably because this is likely to be less than 0.3 metres above ground. The staircase would be located underneath the building, with a small landing area at the top within the building. The Technical Guidance states that a raised platform is any platform with a height greater than 0.3 metres and will include roof terraces. Garden decking would also be permitted, subject to the height restriction. Each tread on the staircase would have a very limited surface area, and the landing area would be contained within the building. The staircase would not be suitable for any purpose other than access, and does not constitute a raised platform. Its inclusion would not therefore be in conflict with Paragraph E.1.(h).

Conclusion

18. The basis of the application is that the proposal benefits from permitted development rights under Class E of Schedule 2 Part 1 of the GPDO, but I have

found that it would involve an engineering operation as a separate activity of substance, which requires planning permission in its own right.

19. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of outbuilding compliant with Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) Order 2015 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.

N Thomas

INSPECTOR