
Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 May 2020

Appeal Ref: APP/C3620/X/19/ 3243326

Bluebell Cottage, Horsham Road, Wallis Wood, Dorking RH5 5RL

- 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 N Lamont against the decision of Mole Valley District Council.
 - The application Ref MO/2019/1583/PCL, dated 9 September 2019, was refused by notice dated 1 November 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 erection of a detached outbuilding.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Procedural Matter

2. In response to travel restrictions currently in place due to the COVID-19 pandemic I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on the information already available. Both the appellant and the Council have agreed to the appeal proceeding on this basis.

Main Issue

3. Planning merits are not relevant in this appeal. My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. The main issue, therefore, is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

4. Amongst other things, Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO) sets out that the provision within the curtilage of a dwellinghouse "any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such" is permitted development.

5. There is no dispute that a personal home office and storage area, are uses which, in principle, could be considered as incidental to the enjoyment of the dwellinghouse. However, the Council considers that the proposed outbuilding would not be incidental because three outbuildings already exist within the garden area of this property and collectively their footprint is larger than the footprint of the dwellinghouse. The Council argue that an additional outbuilding such as proposed is excessive and therefore cannot be considered incidental.
6. The existing outbuildings on the site and the area they occupy is covered by Paragraph E.1 (b) which states that "the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)." There is no disagreement that the proposed outbuilding would be within the curtilage of the dwellinghouse. Moreover, the Council officer's report states that the proposed outbuilding meets all the requirements of paragraphs E.1 of Class E of the GPDO and this includes E.1 (b). There is nothing in Class E of the GPDO which states that the collective footprint of outbuildings must not exceed the footprint of the original dwellinghouse. Thus, the collective footprint of these buildings (albeit larger than the footprint of the dwellinghouse) does not mean that the proposed outbuilding is excessive and is not incidental.
7. My attention has been drawn to case law¹ which refers to the need to consider whether "the nature of the activities carried out in the proposed building ensure they are incidental or conducive to the very condition of living in the dwellinghouse." It goes on to say that "the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities." "When a matter is looked at as a whole, size might be an important consideration but not in itself conclusive." It was held that "incidental connoted an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse."
8. The proposed outbuilding would be approximately 30m². Moreover, having regard to the appellant's submitted evidence which includes a ground floor layout plan² of the proposed building, comprising an office area and storage space. In my view the proposal is not unreasonable in size for the purposes of a personal home office and storage and would appear subordinate in scale to that of the main dwellinghouse.
9. The appellant states that the proposed uses cannot be accommodated within the main dwellinghouse and in the submissions has sufficiently demonstrated why each of the existing outbuildings could not be adapted for use as a home office.
10. As such, on the evidence available to me and having regard to all other matters raised, I consider that, as a matter of fact and degree, it has been shown on the balance of probabilities that the proposed building is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
11. I acknowledge a resident's concern that the building could be used for a primary residential use in the future. However, there is no suggestion that the outbuilding would be used for such purposes. In any event, this finding would

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

² Drawing number 001A.

not prevent the Council from exercising their powers of enforcement if the appellant proceeds to construct the proposed outbuilding not in accordance with the submitted plans, or to construct it for a different purpose, or if the building is subject to a future material change of use.

Conclusion

12. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a detached outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Elizabeth Jones

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 9 September 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plans attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed erection of a detached building would be permitted development falling within Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 for development permitted under the provisions of Class E of Part 1 of Schedule 2.

Signed

Elizabeth Jones

Inspector

Date 18 May 2020

Reference: APP/C3620/X/19/3243326

First Schedule

Proposed erection of a detached building as shown on Drawing: No 001.

Second Schedule

Land at Bluebell Cottage, Horsham Road, Wallis Wood, Dorking RH5 5RL

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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plans. Any 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.



Plans

These are the plans referred to in the Lawful Development Certificate dated:

by Elizabeth Jones BSc (Hons) MTCP MRTPI

Land at: Bluebell Cottage, Horsham Road, Wallis Wood, Dorking RH5 5RL

Reference: APP/C3620/X/19/3243326

Scale: Not to Scale

