
Appeal Decisions

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2020

Appeal A, Ref: APP/Y3615/X/19/3236672

**Sugar Baker House, Lombard Street, Shackleford, Godalming, Surrey
GU8 6BH**

- 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 & Mrs M Walton against the decision of Guildford Borough Council.
 - The application, Ref 19/P/00820, dated 8 May 2019, was refused by notice dated 18 July 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 proposed development for outbuilding to be used for incidental domestic purposes (home office and games room).
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Appeal B, Ref: APP/Y3615/X/19/3241586

**Sugar Baker House, Lombard Street, Shackleford, Godalming, Surrey
GU8 6BH**

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr & Mrs M Walton against Guildford Borough Council.
 - The application, Ref 19/P/01412, is dated 13 August 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 proposed development for outbuilding to be used for incidental domestic purposes (home office and games room).
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Decisions

Appeal A

1. The appeal is dismissed.

Appeal B

2. The appeal is dismissed.

Procedural Matters

3. The appellants requested a site visit as the site cannot be seen from the road and they wished the Inspector to see the change in levels on the site. The

Procedural Guide - Certificate of lawful use or development appeals – England, dated 23 March 2016, states at paragraph A.9.4. "Where the appeal concerns a case which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 13 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

4. I reviewed the submissions and concluded that all the information needed to assess the proposals was included with the applications and appeal documents and therefore a site visit was not necessary. I have therefore determined the appeals without visiting the site. LDC applications under section 192 are not the equivalent in law of a planning permission and therefore there are no issues of planning merits to be considered.
5. Following the refusal of the application that led to Appeal A, the appellants submitted a revised application for a smaller outbuilding which forms Appeal B. This appeal is in respect of the non determination of that application. The Council have indicated, if they had been in a position to determine the application, that it would have been refused on the basis that the size of the outbuilding and the proposed uses would not be considered as being incidental to the enjoyment of the dwelling.
6. The appellants' drawings in respect of both appeals were not sufficiently dimensioned to demonstrate how the limitations on size would be met. Consequently, following an exchange of emails between the parties, all of the dimensions were clarified. These dimensions are now shown on drawings accompanying emails from the appellants dated 27 May 2020 and 12 June 2020. I have accepted these drawings on the basis that no injustice would be caused to the Council as they merely clarify what was not entirely clear at submission stage. My decisions are therefore based on the written dimensions shown on these drawings.

Main Issue

7. The main issue in each appeal is therefore whether the Council's decision, or intended decision, to refuse to grant certificates of lawful use or development was well founded.

Reasons

8. The appeal site is a large detached house set in extensive grounds where there are 'several outbuildings'¹. The appellants propose to erect an outbuilding in the rear garden, which slopes away from the house, to be used for leisure purposes as a games room (described on the plans as a 'Party barn and games room') and as a home office. The drawings show a building with essentially two main rooms. The smaller of the two would be the home office room and would be situated on higher ground than the larger games room below it. The building in Appeal A is larger than in Appeal B but the layout of the rooms is basically the same.
9. The Council's reason for refusal in respect of Appeal A is that the proposal would not constitute permitted development (PD) under Class E of Schedule 2,

¹ Appellants' Statement of Case paragraph 5.3

Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). This is on the basis that the height of the building would exceed the 4m limit set out in Class E and it would not be reasonably required for purposes incidental to the enjoyment of the dwelling.

10. Class E grants planning permission for any building or enclosure, swimming or other pool within the curtilage of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as such, subject to certain conditions and limitations. All of the conditions and limitations must be met for the building to be PD including each of the size limitations.
11. In particular, development is not permitted if the height of the building would exceed 4m in the case of a building with a dual pitched roof and the height of the eaves would exceed 2.5m. The Council found there would be no conflict with the eaves height limitation but I have reached a different view for the reasons set out below. Having regard to the remaining conditions and limitations set out in Class E, I see no reason to take a different view from the Council.
12. The Department for Communities and Local Government publication 'Permitted development rights for householders: technical guidance'² (the TG) has been produced to help people understand more about the detailed rules on PD and I have taken this guidance into account in dealing with these appeals. This states that the height of the building should be measured from the highest ground level immediately adjacent to the building (as set out in Article 2(2) of the GPDO). In respect of the eaves though, these are measured from the ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope.
13. In respect of Appeal A, the dimensioned drawing shows that although the eaves height on part of the building would be 1.63m, it would be 2.89m in other parts. In respect of Appeal B, the dimensioned drawing shows that the eaves height on part of the building would be 1.75m and 2.87m in other parts. The GPDO states that the height of the eaves should not exceed 2.5m and the TG sets out that this limitation applies to *any part* (my emphasis) of the building. On this point alone neither building would be PD.
14. In respect of the height of both buildings, the TG does not provide an example with illustrations where a detached building would be built on sloping ground. However, 'height' is interpreted in the GPDO as measured from ground level and 'ground level' means the level of the surface of the ground immediately adjacent to the building or, where the level of the surface of the ground on which a building is situated is not uniform, the level of the highest part of the surface of the ground adjacent to it. The height of Building B is dimensioned as being 3.67m adjacent to the highest part of the surface of the ground adjacent to it and, as such, the height limitation in Class E is therefore met. However, the height of Building A would be marginally greater than the 4m limit, at 4.080m, and the height limitation in Class E is therefore not met.
15. I turn now to consider the proposed uses of the building in each appeal. When evaluating whether the development is reasonably required for the enjoyment

² The version in operation at the time of the Council's decision was April 2017. This has now been updated to the September 2019 version.

of the dwelling house as such, matters such as personal preference are not conclusive factors. The matter also does not rest on the unrestrained whim of the householder. A sense of objective reasonableness is required in all the circumstances of the particular case. The outbuilding will not necessarily be reasonably required just because the householder says it is and it is for an appellant to *show* (my emphasis) it is *reasonably* required and designed with incidental uses in mind, having regard to the circumstances. This is because there is no statutory definition of "incidental" in the GPDO.

16. The appellants submit that the proposed uses are generally accepted as ancillary and could not be accommodated within the main house. They would not be unreasonable for a property of this size and there are no other outbuildings within the site that could accommodate the uses. They also rely on case law on the matter, namely *Emin*³, a number of previous appeal decisions to support their case⁴, as well as several previous decisions of the local planning authority.
17. The size of the home office proposals would be either 7.2m x 4.7m in Appeal A or 5m x 4m in Appeal B. It is considered that the space allocated in each case is generous and is akin to a single garage whereas, in comparison, many home offices make use of a spare bedroom area. There is no explanation as to why in Appeal A the required space needs to be so large and to be able to accommodate two desks, or why such a large space is needed in Appeal B, when there is only one desk.
18. The appellants submit the sizes are 'appropriate' and 'proportionate' given the size of the host property but, in my view, this does not mean that they are reasonable. The Council's approved layout for the extension and refurbishment of the host property shows what appears to be five bedrooms and a home office, which met the needs of the family at the time of the application. It included a home office as Mr Walton works from home, otherwise there would have been no need to show it within the layout. There is no explanation as to why there is now a requirement for an additional bedroom resulting in the loss of the home office or why the library in the host property is not suitable as presumably a quiet area for a home office. This is situated between the dining room and the drawing room on the appellants' revised internal layout of the property.
19. Submitting that the home office remote from the host property is necessary to provide a peaceful work environment, whilst desirable, does not explain why this is now reasonably required compared to the previous layout of the dwelling. Furthermore, it is not clear how positioning the home office adjacent to a leisure use would provide the necessary workspace 'which has no noise from household activities'. Whilst the home office is capable of being an incidental use to the residential use of the main dwelling, it is my view that the appellants have failed to show that in this case it is reasonably required as an incidental use in either Appeal A or B.
20. Turning now to the leisure use, the space proposed in both schemes again is generous at 10m x 6.7m in Appeal A and 8.3m x 6.7m in Appeal B. Both

³ *Emin v SSE & Mid Sussex DC* [1989] EGCS 16

⁴ Eight Acre Ref: APP/B1930/X/07/2061614; Hyde Lane Ref: APP/P1940/X/12/2176006; Rockwood Ref: APP/R3650/X/16/3160900 and Coniston Ref: APP/P1940/X/12/2188122

layouts include a WC and small storeroom and both areas are labelled 'Party barn and games room'. The Appeal A layout shows a bar, drum kit and table tennis table but the Appeal B layout omits the bar and table tennis table and shows a pool table instead, which the Council state is larger than the maximum size regulation competition pool table. These changes, and the discrepancy over the size of the pool table, would appear to indicate that the appellants are not clear on what they are proposing, which might explain the size of the room and a lack of demonstrable justification.

21. It has not been shown why the nature of the leisure use has changed between the schemes but on the face of it, both could be regarded as incidental uses. However, there is little explanation or information as to why the leisure use is reasonably required within a new outbuilding as opposed to being accommodated elsewhere within the host property or another existing outbuilding. The appellants explain, in response to a Council query, that a former stable with restricted dimensions is now used for domestic storage, and thus is unsuitable and unavailable for any other use. Notwithstanding this, there are no detailed plans of the site showing all the outbuildings and how they are used. Thus, I am not satisfied that the outbuilding is reasonably required for the leisure use.
22. The appellants refer to four other appeal decisions and quote extracts from Eight Acre, Hyde lane and Rockwood to support their argument that the proposed uses would be incidental. However, the thrust of the Inspectors' reasoning relied upon addresses the size of the outbuildings in those cases. I agree with the Inspector in the Coniston case, who concluded that other appeal decisions did not direct his own conclusions. Like him, I accept they are material considerations, however, the decisions all turn on their own particular circumstances and the evidence before those Inspectors. *Emin* emphasises that it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling house, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. Overall, in both Appeal A and Appeal B, I find that the appellants have not fully engaged with *Emin*.
23. On the evidence before me, I am not satisfied, as a matter of fact and degree, that the totality of the proposed outbuilding in either Appeal A or B is genuinely and reasonably required to achieve the purpose of accommodating the proposed incidental activities. Furthermore, the proposed building in each appeal fails, for the reasons set out above, to meet the size limitations within Class E, Part 1, Schedule 2 to the GPDO. Accordingly, they would not have been lawful at the time of the LDC applications.

Conclusions

Appeal A

24. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an outbuilding to be used for incidental domestic purposes (home office and games room) 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.

Appeal B

25. For the reasons given above I conclude that the Council's deemed refusal to grant a certificate of lawful use or development in respect of an outbuilding to be used for incidental domestic purposes (home office and games room) 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.

D Fleming

INSPECTOR