
Appeal Decision

by Elizabeth Jones BSc (Hons) MTCP MRTPI

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

Decision date: 26 June 2020

Appeal Ref: APP/K2230/X/19/3241778

Hartshill Bungalow, Thong Lane, Gravesend DA12 4AD

- 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 S Gill against the decision of Gravesham Borough Council.
 - The application Ref 20191003, dated 17 September 2019, was refused by notice dated 15 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 outbuilding and associated hardstanding.
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Decision

1. The appeal is dismissed.

Procedural Matter

2. Following review of the case it appeared that the appeal could be determined without a site visit without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient documentary evidence to understand the nature of the site. Both the appellant and the Council were contacted, and it was agreed that as the appointed Inspector I could proceed on this basis.
3. The application is to ascertain whether the proposed development would have been lawful if instituted or begun at the time of the application (s192(2) of the Act). At that time the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) was in force and is of relevance in this appeal.

Main Issue

4. Planning merits are not relevant in this appeal. Thus, issues of its impact and general acceptability in planning terms are not relevant to my decision which 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 refusal to grant an LDC was well-founded.

Reasons

5. Amongst other things, Class E, of Part 1, Schedule 2 of the 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. It is not disputed that the proposed building would be within the curtilage of Hartshill Bungalow.
6. 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."
7. The Council's view is that due to its size and the purposes for which it would be used, the building cannot be considered incidental.
8. In this case, a triple garage for the parking of vehicles and a woodstore/clothes drying/sheltered storage area are uses capable in principle of being incidental to the enjoyment of the dwellinghouse. However, the equipment store would be used to house machinery namely - two tractors, a tractor attachment cutter/roller and a jet wash. I am informed by the appellant that the machinery is required to maintain an adjacent field which is outside the garden area of the main dwellinghouse. Although the building may provide secure storage and a degree of shielding from noise and dust from the future Lower Thames Crossing highway works, contrary to the appellant's submissions, the storage of such machinery used in connection with land outside the domestic curtilage of Hartshill Bungalow, would not be incidental to the enjoyment of the occupants of the dwellinghouse.
9. Notwithstanding the comments that should the equipment store no longer be required for machinery in the future, it could be used for the parking of a fourth vehicle or classic car. It has been established in *Emin* that the question to be answered is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose, which in this case is an equipment store for the storage of tractors, a cutter/roller and a jet wash together with a triple garage, a woodstore/clothes drying/sheltered storage area.
10. Turning to size, it is consistent with *Emin* that size is not in itself decisive but is a material consideration. The submitted drawings show a building with an approximate floor area of 114m². According to the Council's measurements, the existing dwelling has a footprint of 88.5m² and the proposed building would be larger than the existing dwelling by approximately 26m².
11. With reference to two other appeal decisions², the appellant contends that the correct test for the size of a building is against what exists today and not the original dwelling. The appellant states that the footprint of the existing

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

² APP/R5510/X/16/3143072 & APP/R5510/X/16/3143074

dwellinghouse is 166m² which includes a single storey rear and side extension³ not yet built. However, as this extension⁴ has not yet been constructed it does not exist. Therefore, it cannot be taken into account when considering the size of the existing house. The footprint of the proposed outbuilding rather than being less than that of the main dwellinghouse as argued by the appellant, would in fact be larger as stated by the Council.

12. Whilst there is nothing in Class E to say the footprint of the proposed outbuilding must not exceed the footprint of the original dwellinghouse, that does not mean that the size of the outbuilding is irrelevant. I appreciate that Hartshill Bungalow has additional floorspace at first floor level and that the size of the proposed outbuilding is smaller than the outbuilding subject of a previous LDC refusal⁵. Nevertheless, the scale of the proposed outbuilding even on a reduced scale to that previously submitted, would be larger than the main house. The size and scale of the proposed outbuilding is an indicator that its uses are unlikely to be ancillary or subordinate to the main use of the property as a dwellinghouse. Locating the outbuilding in the garden area to the side of the main house, away from the road access and closest to the paddock would not ensure that it would be subordinate to the main dwellinghouse.
13. The combination of these factors, 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 not been shown on the balance of probabilities that the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Therefore, it would not be permitted development falling within Class E of the GPDO.

Conclusion

14. 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 and associated hardstanding 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.

Elizabeth Jones

INSPECTOR

³ LDC Ref: 20190013

⁴ LDC Ref: 20190013

⁵ LDC Ref: 20190269