



Appeal Decision

Site visit made on 30 June 2020

by Stephen Brown MA(Cantab) DipArch RIBA

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

Decision date: 21 July 2020

Appeal Ref: APP/J1915/X/20/3244345

Red Cottage, Track south from Lower Hatfield Road through Howe Green to Ashfield Farm

- 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 by Mr Kee against the decision of East Hertfordshire District Council.
 - The application ref. 3/19/1469/CLPO, dated 4 July 2019, was refused by notice dated 24 October 2019.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which a certificate of lawful use or development is sought is the erection of an outbuilding, creation of a vehicular access, creation of a hardstanding and installation of a gate.
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Decision

1. The appeal is dismissed.

Preliminary matters

2. For the avoidance of doubt, I should explain that in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended (the Act), which relates to an application for a lawful development certificate, the planning merits of the proposed development are not relevant, and they are not therefore an issue for me to consider. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

Background

3. The appeal site lies at the corner of a lane leading south from the B158 Lower Hatfield Road. Red Cottage stands in the southern part of the site with an asphalt drive leading from the access in the lane. There is a detached double garage and a glasshouse standing to the north of the house. The main garden area is planted with trees and lawn to the east and south of the house, and there is a swimming pool within a fenced compound. The northern part of the site is a paddock area with two stables buildings granted planning permission in 1984¹.
4. The proposed outbuilding would be L-shaped in plan, located near the north-eastern corner of the paddock. The leg of the L parallel to the eastern boundary would include a double garage, gym, entrance hall, shower and utility rooms,

¹ Decision notice ref. 3/84/0671/FP, dated 4 June 1984.

and a studio. It would be about 20 metres long by about 6 metres wide, increasing to about 7.5 metres wide for the double garage. The leg parallel to the northern boundary would be about 5.5 metres wide by about 10 metres long and be for a games room. I understand the footprint of the outbuilding would be between about 168 and 192 square metres², and that the footprint of Red Cottage is about 166 square metres.

Reasons

5. The main issue for me to determine is whether the Council's decision to refuse the grant of a LDC was well-founded. In that regard the principal question is whether the proposed outbuilding would be permitted development under the provisions of Classes E and F of Part 1, and Classes A and B of Part 2 to Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). In a case of this sort the burden of proof is upon the appellant to show that on the balance of probabilities this is the case.
6. Class E of Part 1 includes permission for the provision of any building within the curtilage of a dwellinghouse for a purpose incidental to the enjoyment of the dwellinghouse as such. Class F of Part 1 permits the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such. There is no relevant preclusion from this allowance, but it is subject to conditions set out in paragraph F.2.
7. Class A of Part 2 to Schedule 2 of the GPDO includes amongst other things permission for the erection of a gate. Class B of Part 2 permits the formation, laying out and construction of a means of access to a highway which is not a trunk road or a classified road, where that access is required in connection with development permitted by any Class in Schedule 2 (other than by Class A of Part 2).
8. Looking first at the lawfulness of the proposed outbuilding, the two main considerations are whether the building would lie within the curtilage of Red Cottage, and whether it would be for a purpose incidental to the enjoyment of the dwellinghouse as such.
9. Regarding curtilage, in the High Court case of *Sinclair-Lockhart's Trustees*³ it was found that it is enough that land serves the purpose of the building in some necessary or useful manner, even though it need not be marked off or enclosed in any way. In the case of *Methuen-Campbell v Walters*⁴ it was found that for land to fall within the curtilage of a building, the former must be so intimately associated with the latter as to lead to the conclusion that the former, in truth, forms part and parcel of the latter.
10. The paddock area is separated from the garden by a post and rail fence with a mature hedge along a significant length of the boundary. Access to the paddock is through a 5-bar gate at the northern end of the access drive. The grass is relatively roughly cut – as compared with the lawns adjacent to the house. It appears to me that the paddock area is clearly demarcated from the gardens and drive around the house, and that character and appearance of that land is distinctly different from that of the house and its garden.

² The appellant's and the Council's estimates respectively.

³ *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P & CR 195.

⁴ *Methuen-Campbell v Walters* [1979] 1 QB 525.

11. Although the paddock land may be used by the present owner for exercising dogs, it is not a particularly necessary activity for that piece of land and only of marginal use since it could as well occur on the extensive garden area.
12. As a matter of fact and degree I do not consider the paddock area can be seen as so intimately associated with the immediate surroundings of the house that it forms part and parcel of that land. Nor does it serve the purpose of Red Cottage in any particularly necessary manner. As a matter of fact and degree it does not therefore fall within the curtilage of Red Cottage. For that reason I do not consider the proposed outbuilding or the hardstanding benefit from the provisions of Class E or Class F of Part 1 to Schedule 2 of the GPDO.
13. I appreciate that the 1984 planning permission was subject to a condition that the development should only be used for a purpose incidental to the enjoyment of the dwellinghouse within the application site and for no other purpose. However, in my opinion this condition placed a permanent limitation on the use of that particular development, it did not define the extent of the curtilage of the dwellinghouse.
14. I turn now to the second main consideration – whether, if the paddock were found to be within the curtilage of Red Cottage – the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse as such. While size in itself is not determinative, the case of *Emin*⁵ suggests that the scale of activities is obviously important since the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwellinghouse as such and constitute something greater than a requirement related solely to that purpose. In that context the physical size of a building could be relevant in indicating the nature and scale of activities.
15. An outbuilding must be 'required for some incidental purpose' to be permitted development under Class E. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose, and whether it can be seen as ancillary or subordinate to the main use of the property as a dwellinghouse.
16. In this case the principal spaces of the gym, studio and games room are of considerable sizes, but there is little indication of how these rooms are to be used. Almost half the area of the games room – itself about 50 square metres – is shown as a seating area, a use that could be expected to take place in the main house. The shower room, utility room and entrance hall are themselves elements that might be expected in the main house. There is no explanation or reasoning for the studio and gym, which together constitute about 50 square metres of floorspace. Furthermore, there is little explanation for introduction of a double garage, when there is already a double garage close to the house – albeit slightly smaller than that proposed. As a matter of fact and degree I do not see this building as ancillary or subordinate to the main house. This is accentuated by the introduction of the new road access, gate, and substantial area of hardstanding, indicating that the new building could be used entirely separately from Red Cottage.

⁵ *Emin v SSE & Mid Sussex District Council* [1989] JPL 909.

17. Given my findings as to the curtilage and outbuilding it follows that the hardstanding too is not within the curtilage of Red Cottage, nor is it incidental to the enjoyment of the dwellinghouse as such.
18. Regarding the proposed access, I concur with the Council's view that it would be from an unclassified road, and to that extent might be permitted. However, given my finding that neither the outbuilding or hardstanding would be permitted development, the new access would not be required in connection with development permitted by any other Class in Schedule 2, and therefore precluded from the allowance.
19. Overall, I have found as a matter of fact and degree that the land in question is not within the curtilage of Red Cottage and does not benefit from permitted development rights under Part 1 of Schedule 2 to the GPDO. Furthermore, the proposed outbuilding and hardstanding cannot be regarded as being for a purpose incidental to the enjoyment of the dwellinghouse as such. It follows that the proposed road access is not required in connection with development permitted under one of the other Classes of Schedule 2. Although the proposed gate could be permitted, it would be part and parcel of the proposed access and hardstanding and be superfluous in the context of those elements not being permitted.
20. I conclude that on the balance of probabilities the proposed development would not be permitted under the provisions of the GPDO, and that the Council's decision was well-founded.

Conclusions

21. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of an outbuilding, creation of a vehicular access, creation of a hardstanding and installation of a gate 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.

Stephen Brown

INSPECTOR