



Appeal Decision

Site visit made on 7 July 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 10 August 2020

Appeal Ref: APP/Y3615/X/20/3244438

Primrose Cottage, Bagshot Road, Woking, Surrey GU3 3QB

- 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 Clarke against the decision of Woking Borough Council.
 - The application Ref PLAN/2019/0989, dated 10 October 2019, was refused by notice dated 16 December 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 described as erection of domestic outbuildings and a swimming pool.
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Decision

1. The appeal is allowed insofar as it relates to the proposed swimming pool and associated pool-house/plant building, and a lawful development certificate (LDC) is issued in the terms set out below in the Formal Decision. The appeal is dismissed insofar as it relates to the proposed gym/home office building.

Preliminary Matters

2. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 10 October 2019. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application which, hereafter, I shall refer to as "the GPDO".
3. In an appeal under s195 of the Act against the refusal of a LDC the planning merit and/or impacts of the matter applied for do not fall to be considered. As such, although the site lies within the Metropolitan Green Belt this is not material to the application.
4. Instead, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and I shall reach my decision on the various evidence before me and also observations at my site visit.

Main Issue

5. The legislation, under Article 3, Schedule 2, Part 1, Class E of the GPDO, grants planning permission for, amongst other things, any building or enclosure,

swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse.

6. The GPDO's Technical Guidance document, which provides clarification as to the interpretation of householder permitted development (PD) rights, indicates that Class E also allows, subject to certain conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings and garages as long as they can be properly be described as having a purpose incidental to the enjoyment of the house
7. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

8. Both parties agree that the relevant provisos under E.1, E.2 and E.3 would be met. The only issue of contention in this appeal is the Council, in its assessment of the evidence received, being of the view that the proposed buildings would exceed what is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The appellants argue otherwise.
9. Primrose Cottage itself is a two-storey dwellinghouse which is set within a sizeable identified curtilage. A single-storey extension has been added to the house. At my site visit I also observed two outbuildings of note. The largest of these, is a wide, single-storey structure which sits alongside, but detached from the house and appears to accommodate both garage and additional living floorspace. Set behind is a timber-boarded summer house feature. To the rear of the summerhouse is also a garden shed, close to the site's boundary. Although the dwelling's identified curtilage, as ringed in red on drawing no 01A, is not disputed I note that a large piece of land, extending through the woodland beyond, is in common ownership.
10. The proposal involves three elements. These are shown on submitted drawing no 32 B and include a building described as a 'Gym/Home Office' with external measurements of 6.6m x 8.6m, a 'Pool House/Plan' measuring 5m x 7m, and an open swimming pool measuring 4.6m x 10m with its depth of 1.5m submerged below ground.
11. The courts have held that the term "required" in this part of the GPDO should be interpreted to mean "reasonably required." In the judgement of *Emin v SS E and Mid Sussex DC* [1989] JPL 909 it was held that when deciding whether the proposed use of a building would be incidental to the enjoyment of the dwellinghouse it was necessary to consider whether the building is genuinely and reasonably required or necessary to achieve that purpose.
12. That principle was reiterated in *Holding v FSS & Thurrock BC* [2004] JPL 1405 and *LB Croydon v Gladden* [1994] 1 PRL 2. In the latter case it was held that for a use to be considered incidental to the enjoyment of a dwellinghouse and exempted from development under s55(2)(d), it must be of a scale and nature that is incidental to the reasonable enjoyment of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage. The keynote is 'reasonableness'.
13. The appellants, in response to the Council's comments, say that the existing outbuildings are not designed to provide the facilities that the proposed pool

house and gym buildings would provide. However, I would consider it more of a personal choice that a new building be sought for the intended gym/office. Whilst it is mentioned that the existing outbuildings are already used otherwise, it would not be uncommon for floorspace to be cleared, even within the main dwelling, and maybe reconfigured to allow use as a small office or for accommodating a relatively small amount of gym equipment, as one might reasonably expect to be commensurate with a residential use.

14. The Council comments that the dwelling's footprint measures at approximately 76 sqm, and the two main outbuildings together provide an additional 80 sqm footprint. In this context, I am inclined to accept that the proposed open swimming pool and associated pool plant room, although sited some way from the house itself, would not be an unusual addition as an integral feature to a residential property in such a contextual setting. In contrast, it seems to me that the erection of a gym/office building measuring approximately 57 sqm goes beyond what could be considered as reasonably required in the circumstances.
15. As in the Emin case, a sense of objective reasonableness is required, and in weighing up the various factors involved, this reinforces my findings. The proposed outbuildings will not necessarily be reasonably required just because the householder says it is and it is for the appellant to show it is reasonably required and designed with incidental uses in mind. In this particular instance, whilst I am satisfied that the smaller building, referred to by the appellant as the size of a single garage, is functionally required to service the swimming pool, I must disagree with the appellants' view that the larger building, likened to the size of a double garage, can be considered as a modest addition and is necessarily incidental as far as the dwelling itself is concerned. Further, cumulative effect has to be a consideration otherwise the significant latitude for development through Class E on residential properties with sizeable curtilages would potentially go well beyond what could be reasonably termed "*for a purpose incidental to the enjoyment of the dwellinghouse*".
16. I have had regard to the two appeal decisions cited by the main parties. On the West Drayton case (*APP/R5510/X/17/3171307*), where the Council's decision not to issue a LDC was upheld, I must agree with the appellant that in terms of context there seems to be little in common with the current case. Turning to the Worplesdon case (*APP/Y3615/X/18/3193130*) where the Council's decision was reversed and the appointed Inspector saw fit to issue a LDC, although he remarks that the footprint of the disputed outbuilding would be significantly smaller than that of the house, he also makes the relevant point that, although it is primarily for the occupiers of the dwelling to determine what incidental purposes they propose to enjoy, this is subject to a test of reasonableness. Notwithstanding this, although points of law will obviously have significant bearing on LDC cases, evidential fact will largely relate to the particular factors and circumstances peculiar to each individual case. Accordingly, direct parallels are not easily drawn and, in the current case, I have concluded, accordingly.
17. Finally, I note the appellants' comments as to their consideration that demolition of any of the existing outbuildings might be seen as commencement of works in respect of the extant planning permission to remove and replace the existing dwellinghouse. However, that particular point of issue has not had

any bearing on my reasoning in this appeal, and has not therefore affected my conclusions.

Conclusion

18. For the reasons given above I conclude, on the evidence available, that on the balance of probability the proposed gym/home office building would conflict with Part 1, E(a) of Class E of the GPDO, and would not therefore be permitted development. The Council's refusal to grant a LDC for the gym building was therefore well founded and, in accordance with s195(3) of the 1990 act as amended, the appeal is dismissed in relation to this element of the development.
19. However, the Council's refusal to grant a certificate of lawful development in respect of the uncovered swimming pool and associated pool-house/plant building was not well-founded and the appeal relating to these elements should succeed. In this respect I will exercise accordingly the powers transferred to me under s195(2) of the 1990 Act as amended.

Timothy C King

INSPECTOR



The Planning Inspectorate

Lawful Development Certificate

APPEAL REF. APP/A3655/X/20/3244438

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE)

(ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 10 October 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed operations described in the first schedule would be permitted development within the terms of Article 3 and Class A within Part 1 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Timothy C King

INSPECTOR

Date: 10 August 2020

First Schedule

Creation of swimming pool and erection of associated pool house/plant building as shown on drawings 04C, 31A and 32B (submitted with application 18/00817/CLP, dated 10 October 2019).

Second Schedule

Primrose Cottage, Bagshot Road, Woking, Surrey GU3 3QB

Notes

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. 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 plan. 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.
4. 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.

Plan

This is the plan attached to the Lawful Development Certificate dated: 10 August 2020

by Timothy C King BA (Hons) MRTPI

**Primrose Cottage, Bagshot Road, Woking, Surrey
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DO NOT SCALE

