



Appeal Decision

Site visit made on 22 October 2020

by Timothy C King BA (Hons) MRTPI

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

Decision date: 07 December 2020

Appeal Ref: APP/C3620/X/20/3248194

Routh, Charlwood Road, Horley, RH6 0AJ

- 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 Nick Sherard against the decision of Mole Valley District Council.
 - The application Ref MO/2019/2100, dated 26 November 2019, was refused by notice dated 22 January 2020.
 - 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 ancillary leisure outbuilding.
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Decision

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

Application for costs

2. An application for costs was made by Mr Nick Sherard against Mole Valley District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 26 November 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".
4. In an appeal under s195 of the Act against the refusal of a LDC the planning merits 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.
5. 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

6. 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.
7. 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, as long as they can be properly be described as having a purpose incidental to the enjoyment of the house
8. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

9. Both main parties agree that from the submitted plans/drawings 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 being of the view that it has not been demonstrated that all or some of the activities could not be provided within the main house or the existing outbuildings. The appellant argues otherwise.
10. Routh itself is a two-storey dwellinghouse which is set within a sizeable curtilage. At my site visit I also observed a series of timber outbuildings in the rear garden which appeared to be in use for storing items consistent with general domestic and garden purposes. The dwelling itself appears to have been significantly extended.
11. The proposal would involve the erection of a timber-framed pitched roof building, measuring some 12.3m x 7.9m, and set in over 2m from the common boundary with Warwick Cottage. It would accommodate a garden room, games room, small cinema room, sauna, hot tub, toilet, shower and changing area. In order for the building to house the said facilities the rooms themselves are somewhat modest in floorspace size.
12. 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 SSE 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. The proposed outbuilding will not necessarily be 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. The keynote is 'reasonableness'.
13. The above principles were reiterated in *Holding v FSS & Thurrock BC* [2004] JPL 1405 and *LB Croydon v Gladden* [1994] 1 PRL 2. In the case of *Holding*, which concerned what might be regarded as a very large incidental building within the curtilage of a dwellinghouse, the Inspector considered that it is reasonable to suppose that the purpose of the permission granted under Class E is to allow for accommodation for hobbies to which people need space in and around their home to be provided without the need for the formality of a

planning application. In the *Gladden* 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.

14. The Council has cited two appeal decisions in an attempt to add support to its decision to refuse the LDC. In a s195 appeal from March 2019 regarding a site at Halesowen involving a similar proposal (*APP/P1805/X/18/3202923*) the Inspector remarked that in cases such as this it is very much a matter of fact and degree based on the specific circumstances of each case, and stated in paragraph 16 of his decision letter:

"... it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. I see nothing in the Emin judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Indeed, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so."

15. The Inspector also made the point that for a building to be considered as permitted development all of it must be required for incidental purposes. In other words, a building which is only in part required for incidental purposes is not incidental to the enjoyment of the dwellinghouse. Although size is not in itself the decisive factor, in the Halesowen case I note that the proposed building would have measured some 375 sqm, with the gym accounting for 78 sqm of the internal floorspace. There is a marked contrast here with that of the current proposal where the external measurements of the building would equate to a relatively modest size of approximately 97 sqm.
16. In concluding, the Inspector commented that, whilst he was satisfied that some of the proposed activities could be said to be incidental, he was not satisfied that, as a whole, the outbuilding would be required for incidental purposes and it would not, therefore fall within the scope of Class E as permitted development
17. The second s195 appeal (*APP/P1805/X/18/3198515*) from 2018 involved a site where an outbuilding was proposed which, amongst other things, would accommodate a swimming pool and plant room, a sensory room, and a bar servery. Although the Inspector regarded the majority of the uses as capable of being incidental to the enjoyment of the dwellinghouse she commented that the bar/servery could be regarded as primary living accommodation and it had not been shown that it was reasonably required or that it could not be accommodated within the main dwellinghouse. This weighed against the proposal, but size was also a consideration here with the proposed building's footprint measuring only some 10sqm less than that of the dwellinghouse itself. Although the appellant had put forward that a family member of the appellant had health needs the Inspector did not consider that a substantial building of some 180 sqm was necessarily required to meet the health needs of the family member or that the uses could not be accommodated in rooms of more modest proportions.

18. Although I have had regard to all the LDC cases referred to, by both parties, whilst points of law will obviously have significant bearing on these, evidential fact will largely relate to the particular factors and circumstances peculiar to each individual case. Hence, the fact and degree considerations. Accordingly, direct parallels between cases are not easily drawn.
19. As mentioned, the Council's reason for refusal indicates a failure to demonstrate that all or some of the activities could not be provided within the main house or the existing outbuildings. However, the majority of the individual rooms' intended functions, as labelled, save perhaps for the intended cinema room which, being rather small in size would be something of a misnomer, are nowadays often found in newly built or converted outbuildings or extensions set aside for leisure purposes. In this context the degree of circulation space, whilst noted, is not a particular concern, nor are the existing individual outbuildings in the rear garden large enough to provide such a consolidated function.
20. It was not possible at my site visit to inspect the accommodation within the main dwelling. Nonetheless, this appeal would not turn solely on whether or not the dwelling is able to contain both the cinema room and games room proposed. It is a good sized house but, even so, and with the type of activities proposed in the outbuilding, it would be wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide more accommodation for secondary activities than the dwellinghouse provides for primary purposes. Also, and this is clearly a consideration, the proposed building could not be seen as relatively disproportionate to the main dwelling.
21. In, therefore, weighing up the various factors and considerations involved, and then applying a test of objective reasonableness, I am satisfied that, as a matter of fact and degree, the totality of the proposed outbuilding is genuinely and reasonably required to achieve the purpose of accommodating the proposed incidental activities.

Conclusion

22. For the reasons given above I conclude, on the evidence available, that on the balance of probability, the proposed building, subject to compliance with the various conditions and limitations of Class E, would also be incidental to the enjoyment of the dwellinghouse. The Council's refusal to issue a LDC was therefore not well-founded and the appeal 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/C3620/X/20/3248194

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 26 November 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 E 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: 07 December 2020

First Schedule

Erection of ancillary leisure outbuilding as shown on drawings 27801-202-BP, 27801-203, 27801-204 and 27801-205 (submitted with application MO/2019/2100PCL, dated 26 November 2019).

Second Schedule

Routh, Charlwood Road, Horley RH6 0AJ

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: 07 December 2020
by **Timothy C King BA (Hons) MRTPI**

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DO NOT SCALE

