



Appeal Decision

Site Visit made on 8 November 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 November 2021

Appeal Ref: APP/M3645/X/21/3277427

Burstow Bridge Cottage, Church Lane, Burstow, Horley, RH6 9TG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Russell Wilson against the decision of Tandridge District Council.
- The application ref TA/2021/529, dated 26 March 2021, was refused by notice dated 25 May 2021.
- 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 the erection of two outbuildings.

Decision

1. The appeal is dismissed.

Preliminary Matters

2. The application form describes the proposal as 'outbuilding under the GPDO¹ – Class E' and refers to the supporting statement and drawings. It is clear from those documents that the application sought an LDC for two outbuildings, as described on the decision notice and the appeal form. I have dealt with the appeal on this basis and used the description in the banner heading above.

Reasons

3. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests. Its planning merits, including the personal circumstances of the appellant, are of no relevance. The legal tests do not allow for the consideration of the effect of the decision on individuals and their rights. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the applications, be lawful.
4. The appellant's case is that the outbuildings are permitted development under Class E of the GPDO. Class E of Schedule 2 Part 1 gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. The Council has refused to grant the certificate on the grounds that the buildings are not incidental due to their size and the scale of the activities. The decision

¹ Town and Country Planning (General Permitted Development) (England) Order 2015 as amended

therefore turns on whether the buildings are for a purpose incidental to the enjoyment of the dwellinghouse. It was established by *Emin*² that it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and to determine whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose.

5. The appellant's appeal statement includes extracts from commentary in the DCP³ with regard to whether buildings would be in incidental use. The commentary refers to case law⁴ including *Emin*, as well as two appeal decisions in the London Borough of Hillingdon⁵. Each case is fact sensitive, and an element of objective reasonableness should be applied. The size of the building can be a relevant factor, but it is a matter of fact and degree based on the particular circumstances.
6. The appeal site contains a modest-sized bungalow within a large open plot in a rural area. There is an existing garage building located to the side and front of the bungalow. The larger of the two outbuildings would be sited adjacent to the house and would provide garaging and household/garden storage, to the rear of the existing garage. The smaller building is proposed within the rear garden and would be a summerhouse/garden building. It would provide shelter and enjoyment of the garden all year round, accommodating space for wheelchair access. The appellant has stated that the buildings are of a scale that is reasonably required to meet the occupant's health needs, and the need to provide space for wheelchair access.
7. The garage/store building is indicated to measure 14 metres wide by 8 metres on the submitted drawings, with a ridge height of 4 metres. The summerhouse/garden room would measure 10.5 metres by 5.5 metres. Both buildings would be large in relation to the bungalow.
8. The stated purposes of the buildings, as garaging, storage and summerhouse, are capable of being incidental to the enjoyment of the dwellinghouse and the appellant states that they will not provide primary accommodation. However, very limited information has been provided to indicate that the buildings are of a scale that is genuinely and reasonably required to achieve the stated purposes. The evidence submitted falls well short of discharging the burden of proof. I cannot therefore conclude that, on the balance of probabilities, they are required for a purpose that is incidental to the enjoyment of the dwellinghouse as such. I therefore find that they are not permitted development under Class E of Schedule 2 Part 1 of the GPDO and planning permission is required.
9. 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 two outbuildings was well-founded and the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

N Thomas

INSPECTOR

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909

³ Development Control Practice

⁴ *Wallington v SSW & Montgomeryshire DC* [1990] JPL 112, [1991] JPL, *Holding v FSS & Thurrock BC* [2004] JPL 1405, *Croydon LBC v Gladden* [1994] 1 PLR 30, *Peche d'Or Investments v SSE & another* [1996] JPL 311

⁵ DCS Nos 400-017-262, 400-011-972