



Appeal Decisions

Site visit made on 1 March 2022

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 March 2022

Appeal A: APP/K2420/X/21/3281105

Fairway Cottage, Leicester Road, Hinckley LE10 3DR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Ms Joanne Haddon against Hinckley and Bosworth Borough Council.
 - The application ref 21/00813/CLP is dated 21 June 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 sought is described as 'Construction of a building incidental to the enjoyment of a dwellinghouse in accordance with Class E of the GPDO'.
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Appeal B: APP/K2420/W/21/3277395

Fairway Cottage, Leicester Road, Hinckley LE10 3DR

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by Ms Joanne Haddon against the decision of Hinckley and Bosworth Borough Council.
 - The application Ref 21/00257/HOU, dated 22 February 2021, was refused by notice dated 18 June 2021.
 - The development proposed is extension to existing dwelling.
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Decision: Appeal A

1. The appeal is dismissed and the application for a certificate of lawful use or development is refused.

Decision: Appeal B

2. The appeal is dismissed.

Applications for costs

3. Applications for costs relating to both appeals were made by the appellant against the Council. These applications are the subject of a separate decision.

Procedural matter

4. The property is described as 'Fairways Cottage' on the application forms but 'Fairway Cottage' on the appeal forms. As the later documents, I have assumed the appeal forms to be correct.

Reasons: Appeal A

Main Issue

5. The Council did not issue any decision relating to the LDC application. However, it has provided a statement indicating that it would not have issued a certificate. The main issue is therefore whether a decision to refuse a certificate would have been well founded. This will turn on whether the proposed building is required for a purpose incidental to the enjoyment of the dwellinghouse as such, so benefitting from the provisions of Class E of Part 1 of Schedule 2 of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO).

Assessment

6. Class E permits the provision within the curtilage of the dwellinghouse of 'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure'.
7. Class E includes various limitations and conditions, many concerned with the size of the building, but it is common ground that the proposed building would accord with these. The dispute centres on the question of whether the building would be genuinely required for purposes incidental to the enjoyment of the dwellinghouse as such. If not, it cannot be permitted under Class E.
8. The Government's *Permitted development for householders - Technical Guidance* assists in the interpretation of the GPDO. In relation to Class E it advises that the rules allow a wide range of buildings as long as they can properly be described as having a purpose incidental to the enjoyment of the house. It explains that a purpose incidental to a house would not cover 'normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen'.
9. Whether or not a building is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such' is a matter of planning judgement, based on the specifics of the particular case. In *Emin v SSE and Mid Sussex DC [1989] JPL 909*, it was held that 'the test to be applied is whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house'. It was necessary to consider whether the buildings were 'genuinely and reasonably required or necessary in order to accommodate the proposed use or activity'.
10. In this case the drawings submitted with the application show that the building would include a garage and workshop, home gym and hobby room. In principle, these may be regarded as purposes incidental to the enjoyment of a dwellinghouse.
11. However, the proposed building would be very large for an outbuilding, the Council stating that it would have a footprint of about 185m², far larger than that of Fairway Cottage. To be incidental implies a degree of subordination and the Council queries whether such a large building is reasonably required. I have therefore considered whether, as a matter of fact and degree, the scale of the building is reasonably related to the incidental use the appellant claims.

12. The information provided with the appeal proposal appears to have been limited, but the appellant made a subsequent LDC application for the same building, and I have been provided with a supporting statement relating to that application. In that statement, a more detailed explanation is given regarding how it is said the building would be used.
13. The proposed garage is said to provide parking for 2 of the occupiers' 4 vehicles. It is clear that there is such a requirement; there is already a garage at the property and the Appeal B proposal incorporates a larger garage to replace it. However, the garage proposed here is larger still, significantly larger than a typical domestic double garage. The appellant says that the increased garage size is largely to meet with requirements imposed by the Council, but the garage now proposed exceeds the standard of 6m x 3m per vehicle the appellant refers to. In any event, it seems reasonable to suppose that the smaller garage proposed in the Appeal B scheme would meet relevant standards and the appellant's requirements for garaging and associated storage.
14. The appellant advises that the gym would have a floor area of 38m². It is suggested that it could accommodate items such as gym equipment, a treadmill, cycling machine, rowing machine and weight training apparatus. While this would take up a lot of space while set out, it results in an unusually large area for a private domestic gym to serve a modest dwelling, and does not appear to take account of the possibility of equipment being folded away when not in use. An additional area would be used to create a shower room. This is said to be a necessity for use in connection with the gym, but bathroom facilities are available in the cottage.
15. The hobby room would be a similar size to the gym and is said to be required for a hobby of training dogs in connection with film work. I understand that local dog training facilities have closed during the pandemic. The appellant suggests that the area proposed is actually undersized for strenuous exercising and training, but the evidence before me does not explain in any detail why such a large area is needed.
16. The design includes a vestibule/hallway. The Council states that it has a floor area of about 8m². In all, the Council advises that the gross internal space of the rooms within the building would total about 158m².
17. It is conceivable that a significant amount of indoor space might be needed for the individual uses claimed by the appellant. Considered as a whole, however, they result in a building which appears to have been designed without restraint and which would be disproportionate in relation to the needs arising from the modest dwelling it would serve.
18. The appellant states that, while there is no requirement for additional bedrooms at the dwelling, there is a requirement for spaces incidental to the enjoyment of the dwellinghouse. However, it is clear that there is, in fact, an intention to secure additional primary living accommodation, which is what the Appeal B extension would provide. It is also clear that the Appeal A building could not be built in addition to the Appeal B extension due to the land it would occupy. Indeed, the appellant has explained that the only reason for making the LDC application was to provide the opportunity to put forward a 'fallback position' in respect of the Appeal B scheme. This casts further doubt as to

whether there is a genuine requirement for the whole of the very large building proposed under Class E.

19. The appellant argues that any consideration of whether the building is 'subordinate' in this context should consider its use rather than its size. It is also argued that accepting the Council's interpretation of the matter would be discriminatory, making it more difficult for the owner of a small dwelling to make full use of Class E permitted development rights.
20. However, the scale of a building proposed under Class E will clearly reflect, to an extent at least, the scale and nature of the uses it is intended to accommodate. Thus, the size of the building is a relevant consideration. My view of this is supported by the judgement in *Emin*, which indicates that 'size may be an important consideration, but not by itself conclusive'. It is also clear from the judgement that comparative size (in relation to the dwelling) may also be relevant. That seems an unsurprising conclusion, since a small dwelling will generally accommodate fewer people than a large one, which will have a bearing on the probable need for buildings to accommodate incidental activities. That does not mean to say that large Class E buildings can be ruled out in such cases, just that their comparative size is a legitimate matter to take into account.
21. I appreciate that Class E includes specific size restraints which are not matters of dispute in this case. However, that does not alter the need to consider whether the proposed building is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such'. In reaching a finding on that matter, it is legitimate to consider the size of the building as part of reaching an overall view. In this case, having done so, I conclude that the building is not genuinely and reasonably required for such incidental use. Consequently, it is not development permitted by Class E.

Conclusion

22. For the reasons given above I conclude that a decision by the Council to refuse to issue an LDC would have been 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 and dismiss the appeal.

Reasons: Appeal B

Main issue

23. The main issue is the effect of the development on the character and appearance of the cottage and the area.

Character and appearance

24. Fairway Cottage is a modest Victorian cottage fronting a main road, a short distance from the town of Hinckley. Despite a scattering of buildings along the road, the area is rural in character. There are residential buildings to either side of the appeal property, the buildings being fairly well spaced with greenery in between. The neighbouring buildings are of traditional appearance and, like Fairway Cottage, have painted walls and tiled roofs.

25. The appeal proposal would see a very substantial addition to Fairway Cottage. Although it would be a 2 storey development, the extension would be much lower than the original cottage, due to the steep dropping away of the land to the rear of the property. Although the appellant argues that the extension would be subservient to the adjacent flats, the nearer of the neighbouring buildings, the impact on Fairway cottage itself is far more relevant.
26. Some care has gone into the design of the extension. A mix of materials and variations in depth and height would help break up the bulk of the extension. The positioning of the extension to the rear of the property and the fall of the land would also help to give an impression of separateness.
27. Nevertheless, the extension would have a profound effect on the character and appearance of the dwelling and the street scene. At about 22.9m wide, the proposed extension would be about twice the width of the existing dwelling. As a consequence, it would appear as a wholly disproportionate addition. This would be most obvious from the rear, from where the 2 storey scale of the addition would be seen. Viewed from the rear, the extension would dominate the original building, so that little other than its roof would remain in view. The extension, with its mix of materials, extensive glazing and sheer scale would be wholly out of character with the cottage, and would result in the site having a far more developed appearance.
28. Views of the rear of the extension would be limited, essentially confined to those obtainable from the golf course to the rear and the neighbouring residential properties. Nevertheless, to the extent that it is seen, the transformation of the rear of the building as a result of the extension would be visually harmful.
29. From the road, the impression would be different, with much of the extension obscured by the house and the slope of the land. Even so, the effect on the building would be very significant, changing it from a modest cottage in a fairly open setting to part of a much greater mass of development. While the full scale of the extension would not be apparent in views directly from the front, it would be about level with the eaves of the cottage and, given its overall scale, would dominate it. A fuller impression of the scale of the addition would be gained in oblique views on the approach to the building along the main road.
30. Moreover, the mix of materials proposed would detract from the simple, traditional character of the cottage. In particular, the dark cladding to the roof and walls fronting the road would sit uneasily next to the painted walls and traditional roof of the cottage. While it is argued that this helps the original cottage to preserve its identity, in my view the original Victorian building would be overwhelmed and its character harmed by this overtly contemporary addition.
31. For these reasons I conclude that the extension would harm the character and appearance of the cottage and the area. This brings it into conflict with Policy DM10 of the Council's Site Allocations and Development Management Policies DPD, which requires developments to complement or enhance the character of the surrounding area with regard to scale, layout, density, mass, design, materials and architectural features. There is also conflict with the Council's Good Design Guide Supplementary Planning Document (SPD), which states that rear extensions should be designed to be clearly subordinate to the main dwelling. Although the appellant suggests that the SPD does not apply to the

appeal scheme, being designed to relate to traditional housing estates and urban environments, I am not persuaded of that, on the information before me.

Other considerations

32. There is an existing large garage next to the cottage, which would make way for the new development. Additionally, I understand that planning permission has been granted to extend the cottage and also to replace the garage with a larger one. It seems likely to me that those developments would take place in the event of this appeal failing, since they would go some way towards achieving the appellant's aims. Thus, it is reasonable to compare the appeal scheme with the cottage as it would appear with those additional developments.
33. I have not been provided with full details of the permitted schemes. Drawings comparing the outlines of the various options have been provided, but these do not allow the details of the schemes, including the proposed materials, to be compared. Nevertheless, it appears from the drawings provided that the cottage and garage would remain distinct and separate buildings in the permitted scheme. As a result, the character of the cottage would be better preserved and the addition is likely to appear more proportionate.
34. Additionally, the appellant advises that an 8m deep extension could be added to the property using permitted development rights under Class A of Part 1 of Schedule 2 of the GPDO. The appellant also refers to rights to construct a separate building within the curtilage of the property under the provisions of Class E. Drawings have been provided showing, in outline, the combined effect of the various fallback options.
35. The Council has not disputed that the 8m extension could be built under the provisions of Class A. However, at 4m high, the permitted development scheme would be a little lower than the current proposal, below the height of the eaves of the original dwelling. As a consequence, it would have a less dominant effect on the cottage, particularly in views from the main road. The reduced height would also help to preserve a degree of separateness between the original house and the garage. Moreover, any development carried out under Class A would need to use materials of a similar appearance to those used in the construction of the exterior of the existing dwellinghouse (Condition A.3(a)). As a result, a scheme permitted under Class A would be likely to better complement the character of the original cottage in my view, even if carried out in combination with the permitted extension and replacement garage.
36. The appellant also refers to the prospects of erecting a very large, entirely separate building under the provisions of Class E of Schedule 2, Part 1 of the GPDO. However, that building is the subject of Appeal A, and I have concluded that it is not permitted by Class E. Accordingly, it does not provide a fallback position for the appellant.
37. Overall, the alternative forms of development suggested by the appellant are either not a genuine fallback option (because planning permission would be required) or would be less visually harmful than the appeal scheme, even those which could be carried out in combination. Consequently, they do not provide a reason to grant planning permission.

38. The scheme would include a number of features that would be beneficial in terms of environmental sustainability, such as rainwater harvesting, solar panels, a ground source heat pump and electric vehicle charging point. While these weigh in favour of the scheme, I have no reason to suppose that some or all of them would not be included in the alternative schemes the appellant has outlined. Consequently, I attach limited weight to this consideration.
39. It is argued that the building is of outstanding/innovative design, but that is not a view I share, given the significant visual harm it would cause.
40. I have had regard to the appellant's concerns regarding the Council's handling of the application, but that does not alter or outweigh my findings regarding the planning merits of the proposal.
41. I have considered whether conditions, including a condition restricting permitted development rights, could make the development acceptable in planning terms, but conclude that they could not. Although the appellant raises the prospect of modifications to the scheme, there is no detailed alternative scheme for me to consider.

Conclusion

42. The conflict with Policy DM10 leads me to conclude that there is conflict with the development plan as a whole and that the scheme does not amount to sustainable development, as described by the National Planning Policy Framework. I have considered all matters raised in support of the development but they do not outweigh the harm I have found. Accordingly, I conclude that the appeal should be dismissed.

Peter Willows

INSPECTOR