The Planning Inspectorate

Appeal Decision

Site visit made on 12 April 2022

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 04 May 2022

Appeal Ref: APP/Y3615/X/3276664
17 Warwicks Bench, Guildford GU1 3SZ

- 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 Robin Lazenby against the decision of Guildford Borough Council.
- The application Ref 20/P/01928, dated 12 November 2020, was refused by notice dated 22 February 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 the construction of a single storey, flat roofed, detached building to provide a garage/bike and bin store, home office and gym, following demolition of the existing garage.

Summary Decision: the appeal is dismissed

Procedural matter

1. The description of the development for which a certificate of lawful use or development is sought is both admirably accurate and precise, but at the same time is somewhat cumbersome. Consequently, I will shorten that description to 'outbuilding' for the purposes of my Decision, whilst keeping in mind the totally of the development that is proposed.

Reasons

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.

3. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed

outbuilding complies with the limitations at Classes E.1, E.2 and E.3, and I see no reason to take a different view.

4. The Council accepts that the proposed uses could be considered genuinely incidental to the enjoyment of the dwellinghouse as such. Again, I see no reason to take a different view. The area of dispute is therefore whether the floor space allotted to the proposed uses, individually and collectively, would be reasonably required in order to accommodate them.

5. Class E provides for any building or enclosure, swimming or other pool *required* for a purpose incidental to the enjoyment of the dwellinghouse as such (emphasis added). The Oxford English Dictionary (OED) defines 'required' as 'needed for a purpose'. In relation to Class E, the Courts have interpreted 'required' as meaning 'reasonably required'. Put another way, in the context of Class E this translates as reasonably needed for that purpose.

6. I have no reason to believe that the proposed garage is excessive in size, taking into account the size of modern family cars and allowing for a modicum of storage. Neither do I consider that the proposed gym is excessive in size in the context of a family dwelling. I am therefore satisfied that the garage and gym are both of a size that is reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse.

7. The situation in relation to the proposed home office is less straightforward. I understand that the appellant and his wife both hold senior positions and that both work from home, one on a full-time basis and the other for the majority of the week. I also understand that these are permanent arrangements. They each require space to go about their separate professions and require ancillary space for this. The home office would also provide additional workspace where their children can study after school and in the evenings.

8. The difficulty is that the space allocated for the home office in the outbuilding is quite substantial in the context of a private dwelling. It has a larger floor area than the existing study in the main dwelling. I recognise that in part this might be a result of the ancillary space referred to above, but I have not been provided with details of the respective professions undertaken by the appellant and his wife or any explanations as to why they would require that amount of ancillary space.

9. Similarly, no explanation has been given as to why two desks (with computers) are shown on the application drawings when the primary use of the home office is indicated as being by the appellant or his wife in their separate professions. I note from the application drawings that there is already a study within the main dwelling. The inference I draw from the appellant's statement that "each require space to go about their separate professions" is that either the appellant or his wife would use the existing study in the main dwelling, and the other would use the home office in the proposed outbuilding. If that is not the case, then no explanation has been given as why the existing study in the main dwelling could not be used for that purpose.

10. Moreover, on the basis of the application drawings, a significant proportion of the floorspace of the home office is taken up by circulation space and/or what appear to be storage units. No explanation has been provided to justify what appears from the application drawings to be a profligate use of space for a home office. This is exacerbated by the floor space allocated for the store and

the WC which, whilst neither is unreasonable in the context of a private dwelling, are both on the generous side of being reasonable.

11. Overarching all of the above is the accommodation available in the main dwelling. I have already touched on the uncertainty regarding the use of the existing study, but there is also a room identified on the application drawings as being a 'snug'. I recognise of course that using the room labelled as a snug as a home office would result in the loss of the former as usable space for the whole family. Nevertheless, the availability of potentially usable space within the main dwelling is a material consideration in assessing whether the home office in the proposed outbuilding would be reasonably required. No explanation has been given as to why that space could not be used to provide the additional workspace that is sought in the proposed outbuilding.

12. In the absence of further justification from the appellant, I am not immediately persuaded that the amount of space shown on the application drawings is reasonably required for a home office that purports to be ancillary to the dwellingouse as such. Consequently, as a matter of fact and degree, I am not satisfied that the home office shown on the application drawings can be regarded as being reasonably required for that purpose.

13. The space taken up by the home office goes to the overall size of the proposed outbuilding. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E1[1]. Nevertheless, the Courts have held that the size of the outbuilding is a material consideration and indeed that, when the matter is looked at as a whole, size may be an important consideration.

14. In order to accommodate the home office as proposed, the outbuilding as a whole is larger than would be necessary to accommodate the purposes that are genuinely incidental to the enjoyment of the dwellinghouse as such (i.e the garage, the gym, the store and the WC). For that reason, I consider that the size of the outbuilding taken as a whole is not, as a matter of fact and degree, genuinely and reasonably required for purposes genuinely incidental to the enjoyment of the dwellinghouse as such.

15. The appellant has referred me to a sample of LDC applications that were granted by the Council over the previous five years, and has helpfully summarised the floorspace involved in those proposals in a table. Whilst I have had regard to those applications and the floorspace comparisons revealed by the table, it is axiomatic that the facts and circumstances on which the outcome of those applications turned is specific to those developments. Those facts and circumstances go beyond the floorspace of the proposed outbuilding and the host property, and the relationship between the two. They encompass factors such as the accommodation within the host property and the proposed outbuilding, and the individual circumstances of the applicants. These factors will inevitably vary from case to case, and will differ from those in this case. I recognise of course the importance of consistency in decision making but, because the facts and circumstances invariably differ, the applications referred to by the appellant do not assist in my consideration of this appeal. For that reason, I have determined this appeal purely on the basis of the facts and evidence that are before me insofar as they relate to the appeal property.

[1] *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

Conclusion

16. In appeals against the refusal of an LDC, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made. In this case, the information provided by the appellant is not sufficient to discharge that burden. Consequently, for the reasons given above, I conclude that on the balance of probability the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a single storey, flat roofed, detached building to provide a garage/bike and bin store, home office and gym, following demolition of the existing garage at 17 Warwicks Bench, Guildford GU1 3SZ was well-founded and that the appeal should not succeed. I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

17. The appeal is dismissed.

Paul Freer
INSPECTOR