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# Appeal Decision

Site visit made on 25 July 2022

**by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC**

**an Inspector appointed by the Secretary of State**

**Decision date: 01 August 2022**

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## **Appeal Ref: APP/D2320/X/22/3294330**

### **The Croft, New Lane, Ecclestone PR7 6NA**

- 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 Julian Roebuck against the decision of Chorley Borough Council.
  - The application Ref 21/01454/CLPUD, dated 17 December 2021, was refused by notice dated 11 February 2022.
  - 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 two proposed detached outbuildings.
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### **Decision**

1. The appeal is dismissed.

### **Procedural Matters**

2. I have taken the description of the proposed development from the Council's decision notice rather than the application form. This is because it more succinctly describes the proposed development the subject of the LDC application and the application form incorrectly refers to "Class E of permitted development technical guidance" rather than "Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015" (the GPDO)
3. The wording of s195 of the Act suggests that appeals are strictly limited to a review of the local planning authority's decision. However, they are invariably treated as de novo appeals. Therefore, I should take this approach since s195 refers to the 'refusal' being well-founded – meaning the local planning authority's actual decision and not necessarily the reasons for that decision. Moreover, the application being appealed is made to ascertain whether or not something would be lawful. If the evidence as a whole suggests that the matter in question is not lawful, it would be wrong to grant a lawful development certificate, even if the local authority had different reasons for reaching the same conclusion.
4. In addition, case law<sup>1</sup> holds that the Secretary of State cannot be compelled to issue a certificate when they are of the opinion that one should not be granted.

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<sup>1</sup> Cottrell v SSE & Tonbridge & Malling BC [1982] JPL 443

Therefore I am entitled to consider all the facts before me in reaching a decision, including matters other than the Council's reason for refusal.

### **Main Issue**

5. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. In this case that turns on whether the development falls within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).

### **Reasons**

6. There is no contention between the appellant and the Council that the buildings in question do not meet all the conditions set out in paragraph E.1, including the E.1(c) that development is not permitted by Class E of any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse, which was previously a concern of the Council in relation to LDC application reference 21/01168/CLPUD for two outbuildings.
7. In the light of further evidence from the appellant the Council has concluded that the principal elevation of the original dwellinghouse is the south elevation and, consequently, the proposed outbuildings would not be forward of the principal elevation. However, in my judgement this matter requires some more detailed consideration.
8. According to Permitted development rights for householders – Technical Guidance September 2019 (the Technical Guidance) the "principal elevation" will, in most cases, be *"that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house"*. It is also important not to lose sight of the requirement for the principal elevation to be that of the original dwellinghouse; "original" being defined in the Technical Guidance as a *"building as it existed on 1 July 1948 where it was built before that date, and as it was built after that date"*.
9. Therefore, it is not the principal elevation at the time of determination of the application that is relevant but instead it is the original principal elevation that is material in determining a case such as this. In determining the latest LDC application the appellant and the Council have agreed that the principal elevation is the southern one on the basis that it contains the long section of the dwelling with the best aspects and internal views of the surrounding landscape from habitable rooms, contains the most architecturally dominant elevation and appears as the most important/interesting elevation.
10. The design and way the property functions has changed over time so that more than one elevation has some characteristics that may be typical of a principal elevation, but this is not relevant in the determination of which is the principal elevation of the original dwellinghouse. In my judgement the northern elevation is the principal elevation in that although it does not front the highway serving the house it would have originally contained the main

architectural features and the front door which served as the main entrance to the house. It would have been considered to be the front of the house whereas the south elevation is the rear elevation of the original house with a secondary access into the living room. The west elevation faces the main highway but is the side elevation of the original house with the gable end. Consequently, as a matter of fact and degree and in my judgement based on the evidence before me the two buildings would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. As such they fail to meet exception (c) and cannot be permitted development under Class E.

11. With regard to the incidental nature of the proposals, the plans show two buildings; the first of which would be a flat roofed structure which would contain a swimming pool with plant room, kitchenette, gym, shower and changing room. The second would be a dual pitched roof building with a triple garage, workshop, garden store, photography studio, dance studio, art studio and WC.
12. The appellant contends that the proposed uses for the buildings would be incidental to the enjoyment of the dwellinghouse in land use planning terms. The Council has concluded that the proposed individual uses are capable of being incidental to the enjoyment of the dwellinghouse, but when taken together the scale of the buildings would be of concern. The reason for refusal also identifies the footprint of each building would exceed the footprint of The Croft and would not be commensurate to it in terms of size and scale.
13. There is no statutory definition of "incidental" in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers. In the *Emin* case<sup>2</sup> it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether buildings are genuinely and reasonably required to accommodate the proposed use or activity. In *Emin* it was held that it is 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.
14. I have also taken account of the appeal decision<sup>3</sup> to which my attention has been drawn and that the word "incidental" in the GPDO connotes an "*element of subordination of the proposed building in land use terms*". The Technical Guidance advises that a purpose incidental to a dwellinghouse 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. An outbuilding that is 'incidental' would contain uses that cannot exist without being functionally linked to and dependent on a primary residential use. Examples of this include storage and hobby rooms or other recreational uses.
15. In cases such as this the determination of whether or not a building is incidental is very much a matter of fact and degree based on specific circumstances. Furthermore, there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but

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<sup>2</sup> *Emin v SSE & Mid Sussex DC* [1989] JPL 909

<sup>3</sup> APP/P0119/X/12/2183050

that should not be determinative. The relevance of size lies in the indication it may provide of the scale of proposed activities and whether they would be subordinate to the main use of the dwellinghouse. There is 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. Had 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.

16. In this case the appellant presents that the space proposed in the buildings is genuinely and reasonably required by him and necessary to accommodate the intended uses. However, the Council disputes this, stating that in accordance with case law some objectivity is required as to whether the building is reasonably incidental to the dwellinghouse. In order for a building to be considered as permitted development all of it must be required for incidental purposes. In land use terms I see no reason why the proposed outbuilding is not required for incidental purposes and indeed the appellant's clear evidence is that they are reasonably required for incidental land use purposes. It would accommodate hobby-related space for photography, dance and art, recreational uses such as the swimming pool and gym, domestic-related storage, workshop and garages.
17. Therefore, although I do not dispute that they would be substantial outbuildings, there is certainly subordination in land use terms. I have taken account of the Council's concerns that some of the uses could potentially be accommodated within the existing dwelling, but each of the uses, including the offices, would be functionally linked to and be dependent upon the primary residential use of the site. Therefore, I am satisfied that the proposed use of the outbuildings would be incidental to the enjoyment of the dwellinghouse.

## **Conclusion**

18. I conclude that based on the evidence before me and as a matter of planning judgement, the two proposed detached outbuildings would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. I am satisfied that they would be required in their entirety for incidental purposes and that their sizes would be commensurate with the proposed incidental uses. However, as a consequence of their proposed locations they would not be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.
19. 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 outbuilding was well-founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*A A Phillips*

INSPECTOR