



Appeal Decision

by Thomas Shields DipURP MA MRTPI

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

Decision date: 22 August 2022

Appeal Ref: APP/J3720/X/22/3294417

Claverdon Oaks, Henley Road, Claverdon, Warwick, CV35 8PS

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr T Murphy against the decision of the Stratford-on-Avon District Council.
- The application Ref. 21/03577/LDP, dated 9 November 2021, was refused by notice dated 19 January 2022.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is proposed new triple garage building plus proposed new garden outbuilding.

Summary of Decision: The appeal is dismissed.

Procedural Matters

1. Since the buildings subject of the appeal are proposed, rather than existing, and having studied the detailed drawings, documents, and other appeal submissions from the parties, I am satisfied a decision can be made without a physical inspection of the site. I have therefore determined the appeal on this basis, made solely on matters of fact, planning law, and application of judicial authority.
2. In order for a LDC to be granted the onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed garage and garden outbuilding would be lawful. The relevant date for determining lawfulness is the date of the application.

Main Issue

3. This is whether the Council's decision to refuse an LDC was well founded. It turns on whether the proposed buildings would be lawful by benefitting from the planning permission ("permitted development") available via Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order").
4. The Council considers that the buildings would not be permitted development because they both exceed Class E limitations in respect of their heights, and in respect of the garden outbuilding it includes a verandah. Also, that due to their proximity to the main dwellinghouse they should be regarded as extensions rather than separate buildings. Additionally, that they would not be required for purposes incidental to the enjoyment of the dwellinghouse.

Reasons

Building heights

5. The drawings submitted with the application clearly show that both buildings have a maximum height above ground level in excess of 3 metres.
6. The limitation at E.1.(e) of the Order states that development is not permitted by Class E if the height of the building, enclosure or container would exceed –
 - (i) 4 metres in the case of a building with a dual-pitched roof,
 - (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
 - (iii) 3 metres in any other case;
7. For both buildings the limitation at (e)(ii) would be satisfied.
8. Turning to (e)(i) it is clear from the drawings that the proposed buildings are not buildings with a dual-pitched roof; that is to say neither of them has a roof consisting of two sloping sides falling either side of a ridge¹. As such, they fall to be considered under (e)(iii). Since the height above ground level of both buildings' roofs are greater than 3m they both exceed the limitation and therefore cannot be permitted development within Class E. Accordingly, the appeal must fail for this reason alone.

Whether garden outbuilding includes a verandah

9. E.1.(h) of the Order excludes development from being permitted development within Class E if – *it would include the construction or provision of a verandah, balcony or raised platform.*
10. With regard to “verandah” the Technical Guidance² to the Order advises that a verandah is understood to be *a gallery, platform, or balcony, usually roofed and often partly enclosed, extending along the outside of a building at ground level.*
11. In this context I note that the roof overhang around the outbuilding is quite modest, only extending over the narrow strip of walkway it covers, which is slightly raised (in parts) for the purpose of providing level access into the associated part of the building. It is also unenclosed and hence, other than giving some limited protection from rain to persons going to and from the building, it does not appear to me to be wide enough to provide any other use that one might usually associate with a verandah. I also note that the submitted application drawings and details do not propose or otherwise indicate its purpose as a verandah. Such a purpose is also refuted in the appellant's submissions. Taking account of all these factors, and on the balance of probabilities, I find that the building does not include a verandah and so would not be excluded by E.1.(h).

Whether extensions

12. The Council refers to other appeal decisions in support of its view that the proposed garden building is so close to the main dwellinghouse that it should

¹ Two or more sloping sides from a ridge in the case of hipped roofs

² *Permitted development rights for householders – Technical Guidance*, MHCLG (2019)

be considered as an extension to it, rather than a separate outbuilding. Also, similarly, that the proximity of the proposed garage to the proposed garden building indicates they should be treated as a single building.

13. However, the full particulars and details of those other appeals are not identical to those in this appeal and are not before me. Moreover, each case should be considered on its individual facts and circumstances. That is the approach I take here.
14. The garage building would be sited in line with, and to the side of, the main house, separated from it by a gap of approximately 1.1m. The end elevation overhang of the garden building would be separated from the rear of the garage by approximately 43cm. The garden building would be orientated at right angles to the main house and set further back from it so that the front (south-western) corner of the roof overhang would be separated from the rear/side corner of the house by a gap of approximately 11cm.
15. I acknowledge that the eaves overhang corner of the garden building is close to the rear corner of the house. However, given the right angled orientation of the buildings to one another there is no possibility (without further development) of a direct 'step-through', enclosed or not, from the interior of one building into the interior of the other, as might otherwise be the case if the buildings had overlapping end-to-end elevations. Having regard to this factor and to all other information before me, I find and as a matter of fact and degree that the garden building does not fall to be considered as an extension to the main house, and hence would not be excluded from consideration as a curtilage building within Class E. Additionally, given the separation distance between the rear of the garage and the garden building I consider them also to be separate buildings.

Whether incidental

16. The existing appeal site is a large residential dwelling with a detached single garage to one side, a covered swimming pool to the rear, and all set within a substantial curtilage.
17. *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416 is a judgement relevant to this appeal. It established that the term "incidental" was held to connote an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. For the purposes of applying Class E the term "required" should be interpreted as "reasonably required" rather than the "unrestrained whim" of the occupier. Also, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration, although not conclusive by itself.
18. The critical test to be applied is firstly whether the proposed purposes of the outbuildings, in the context of the whole planning unit, are intended to be and would remain ancillary and subordinate to the main use of the property as a dwellinghouse, and secondly; whether the proposed outbuildings are "reasonably required" in order to accommodate those purposes.
19. I am satisfied that the proposed activities of car parking, gymnasium (with incidental shower and toilet), games room and cinema room relate to activities

and uses that would be ordinarily incidental and subordinate to the use of the main dwellinghouse, and the Council does not argue otherwise.

20. in terms of size, by itself, it is not disputed that the combined floorspace of the garage and the garden outbuilding would slightly exceed the footprint of the original dwelling. However, the buildings would occupy only a small area of land relative to the size of the remaining open curtilage following construction. As such, I consider they would not be disproportionate in the context of the planning unit as a whole. However, size is only one factor and is not decisive by itself.
21. The justification for the size of the proposed garage is that it would be used to house three cars. Given its overall height and three internal bays, which are not excessively large, I find it to be reasonably required for its intended purpose.
22. The proposed rectangular garden outbuilding, excluding the external roof overhang, would have an internal floor space area of approximately 129m². As to its internal floor areas for specified purposes, it would be divided into three separate rooms: a gymnasium with shower and toilet (45m²), a games room (42m²) and a cinema room (42m²). Each room would be accessible externally and internal doors would link the three rooms.
23. I have no reason to disagree with the Council's view that the space for the gymnasium is not excessive and hence I find it would be reasonably required for its intended purpose. While the 42m² area for both the games room and for the cinema could be described as a little generous, I do not consider they are disproportionate or excessive in the context of *Emin*. Having regard to the size of the building, the planning unit overall, and the space allocated for these purposes I find the buildings to be reasonably required.
24. However, for the reasons set out earlier in the *Building heights* section the proposed buildings would not be permitted development within Class E.

Formal Decision

25. For the reasons given above, I conclude, that the Council's refusal to grant a lawful development certificate, for the proposed new triple garage building plus proposed new garden outbuilding, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Thomas Shields

INSPECTOR