



Appeal Decision

Site visit made on 7 June 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 June 2023

Appeal Ref: APP/G2245/X/22/3306491

St. Lawrence, London Road, West Kingsdown, Sevenoaks, Kent TN15 6EU

- 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 Mrs Jean Andrews against the decision of Sevenoaks District Council.
 - The application ref 22/01640/LDCPR, dated 13 June 2022, was refused by notice dated 24 August 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 to replace the mobile home that is annex to the main home with a permanent brick built annex to the main house.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. 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, and its planning merits are of no relevance. 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 application, be lawful.
3. The application the subject of this appeal was made on the basis that an existing mobile home has been on the land for over 5 years and would benefit from being made into a more permanent and more durable facility annex to the main house that would be more appealing to neighbours. The appellant has not explained the basis on which they consider the building would be lawful. The drawing submitted with the application shows that the building would provide three bedrooms, two bathrooms, and kitchen/living room. A plan of the existing mobile home indicates that it has three bedrooms, two bathrooms, kitchen and lounge/dining. The appellant states that her daughter, son in law and three children live in the existing mobile home. The location plan provided with the application does not identify the location of the existing mobile home nor the location of the proposed replacement annex building.
4. Planning permission¹ was granted in 2020 for extensions and alterations to the main house, St Lawrence. The permission was subject to a condition (no 6)

¹ Ref 20/01685/HOUSE

which required that within 3 months of the decision, a mobile home located in the rear garden to the west of the dwelling be removed from the site in its entirety. A subsequent appeal against the condition was allowed, on the grounds that the condition was not necessary or relevant to the permission to be permitted. In his decision, the Inspector noted that the mobile home was on land to the rear of St Lawrence that was subdivided from the main house by an internal close boarded fence. The Planning Officer's report for the application the subject of this appeal states that the mobile home has its own vehicular access onto Millfield Road with two independently accessible parking spaces. This corresponds with what I saw on site.

5. The decision notice states that insufficient information was provided as to the proposed location of the building. The Planning Officer's report explains that the application was determined on the basis that the mobile home does not sit within the curtilage of the dwellinghouse and is being used independently from the dwelling as a separate residential unit. This would be a material change of use for which planning permission is required. However, the location plan indicates that the application relates to the entire plot of St Lawrence up to its boundary to the rear with Millfield Road. I have not been advised that planning permission has been granted for a subdivision of the site to create a separate dwelling. Taking into account that the application is for a *proposed* development (my emphasis) and the proposed building is described as an annex, I have dealt with the appeal on the basis that the building is proposed to be sited within the residential curtilage of St Lawrence and used as an annex to the main house.
6. The Council refused to grant the certificate as it determined that the building would not be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). It is clear from their decision and Planning Officer's report that it was assessed in relation to Schedule 2, Part 1, Class E buildings etc incidental to the enjoyment of a dwellinghouse. Specifically, it determined that it would not be incidental to the enjoyment of the dwelling house and would fail to comply with the limitations in paragraph E.1(a), (b), (c), (e), (f). However, limitation E.1(a) appears to have been included in error as it relates to dwellinghouses where permission has been granted only by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of Schedule 2. I have not been advised that this is the case.

Main Issues

7. Having regard to the Council's reason for refusal and the preliminary matters set out above, the main issues are:
 - whether the annex building is for a purpose incidental to the enjoyment of a dwellinghouse; and
 - whether the building complies with the limitations in paragraph E.1(b), (c), (e) and (f) of Schedule 2, Part 1 of the GPDO.

Reasons

Incidental

8. In order to establish whether the building would be for a purpose incidental to the enjoyment of the dwellinghouse as such, it is necessary to identify the

purpose and incidental quality in relation to the enjoyment of the dwellinghouse.

9. An incidental use is one which is functionally related to the primary use. It cannot therefore be one that is integral to or part and parcel of the primary use. The annex would provide primary living accommodation that would normally be part and parcel of a dwellinghouse. This is part of the primary use, rather than being incidental to it. I do not therefore find, on the balance of probabilities, that the proposed building is required for a purpose incidental to the enjoyment of the dwellinghouse. The proposed annex building cannot therefore be permitted development under Class E, Schedule 2, Part 1 of the GPDO. The proposed annex building would therefore require planning permission.

Limitations

10. Limitation E.1(b) is that the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). However, the proposed siting of the annex building has not been specified, nor is it clear whether there are other structures, enclosures or containers within the curtilage. It is not therefore possible to conclude as to whether the proposal would comply with the limitation of paragraph E.1(b).
11. As the proposed siting of the annex building has not been provided, it is not possible to conclude as to whether it would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse. It is therefore not clear whether the proposal would comply with the limitation of paragraph E.1(c).
12. The proposed annex building is stated to have a height of 4.5 metres, which is in excess of the limitation set out in paragraph E.1(e)(i). It is stated that the height could be reduced to 3.5 metres, but this may still be in excess of the limitations in E.1(e)(iii) if the roof is not to be dual pitched. It may conflict with E.1(e)(ii) if it is within 2 metres of the boundary of the curtilage. Insufficient information has therefore been provided to conclude as to whether it would comply with E.1(e).
13. It has therefore not been demonstrated that the proposed building would comply with the limitations in E.1(b), (c) and (f). I cannot therefore conclude that it would be permitted development under Class E, even if the building were required for a purpose incidental to the enjoyment of the dwellinghouse.

Conclusion

14. I conclude that the Council's refusal to grant a certificate of lawful use or development to replace the mobile home that is annex to the main home with a permanent brick built annex to the main house is well-founded, and that the appeal should fail. I shall exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

N Thomas

INSPECTOR