



Appeal Decision

Site visit made on 22 October 2024

by Mr Phillips BA(Hons), DipTP, MTP, MRTPI, AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 31 October 2024

Appeal Ref: APP/B1550/X/23/3328690

Pondside Lark Hill Road, Canewdon, Essex SS4 3RA

- 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 Mr P Finch against the decision of Rochford District Council.
 - The application ref 23/00383/LDC, dated 27 April 2023, was refused by notice dated 19 July 2023.
 - 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 proposed garden room/outbuilding.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

3. There is no dispute that the proposed outbuilding meets all the size requirements set out in Class E. The proposed plans show a proposed games room, gym area, jacuzzi with supply store, changing rooms and a cinema room. There is no statutory definition of "incidental" in the GPDO; however, case law provides guidance on how it should be interpreted by decision-makers. In the Emin case¹ 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 the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. In the Emin case 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.

¹ Emin v SSE & Mid Sussex DC [1989] JPL 909

4. Nonetheless, the Wallington case² established that it is necessary to consider whether the relevant purpose is incidental to the particular dwellinghouse in question rather than any dwellinghouse. The case of Holding³ which concerned what might be regarded as a very large incidental building within the curtilage of a dwellinghouse, confirmed that this is indeed the correct approach. In determining that case the Inspector considered that it is reasonable to suppose that the purpose of the permission granted under Class E is to allow for accommodation for hobbies for which people need space in and around their home to be provided without the need for the formality of a planning application. Nevertheless, the test that should be applied must retain an element of objective reasonableness and should not be based on the unrestrained whim of the occupier. A hard objective test should not be imposed on cases to frustrate the reasonable aspirations of an owner as long as they are sensibly related to the enjoyment of the dwelling.
5. I find that these judgments and their detailed findings illustrate that in cases such as this the decision is very much a matter of fact and degree based on the specific circumstances of the case. Furthermore, it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. I see 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. Indeed, if 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.
6. In this case the appellant presents that the space proposed is genuinely and reasonably required and is necessary to accommodate its intended use. He states that the uses for which the building is proposed could not be accommodated within any existing outbuilding. There are several existing outbuildings associated with the residential property and each of them has a specific use or uses, including storage, garages, workshops, storing motorcycles, a former stable block and a dilapidated Anderson shelter used for wood storage. However, the test is not whether the proposed uses could be accommodated elsewhere, but whether the outbuilding is required for purposes incidental to the enjoyment of the main dwellinghouse. I agree with the appellant that the current appeal should not be used to determine the lawful nature of existing outbuildings and therefore I have not taken that into account.
7. For a building to be considered as permitted development all of it must be required for incidental purposes. A building which is only in part required for incidental purposes is not incidental to the enjoyment of the dwellinghouse. I have noted that the plans show a cinema room with seating and a large screen which appears to me to be intended for the occupants of the main dwellinghouse to entertain, relax, socialise and watch films or television. The layout and use of the space is not something that would normally require accommodation separate to the living space contained within the main dwelling and the use would not materially differ from the use of the living or

² Wallington v SSE & Montgomeryshire DC [1990] JPL 112; [1991] JPL 942

³ Holding v First Secretary of State [2003] EWHC 3138 (Admin)

family room proposed in the main dwelling. As such part of the outbuilding merely replicates the use of the existing accommodation within the house and extends the primary residential use into the new outbuilding.

8. Therefore, whilst I am satisfied that some of the proposed activities can be said to be incidental, I am not satisfied that as a whole the outbuilding would be required for incidental purposes. In my judgement, it would be used for prolonged periods of time for activities which are primary activities that replicate the use of the main house and would normally be expected to take place in the main house. Therefore, it would not fall within the scope of Class E as permitted development.
9. The appellant contends that the uses for which the outbuilding is proposed could not be accommodated within the main house which is currently being constructed. He argues that the proposed use is not primary living accommodation and therefore there should be no expectation that it should be contained within the main house. It is also argued that all spaces within the main house are occupied and accounted for and the uses within the proposed outbuilding are there legitimately for amenity reasons due to noise and disruption that would not be compatible with sleeping, study or reading, for example.
10. In my judgement these are not legitimate concerns in this case because the layout and accommodation within the main dwellinghouse is the choice of the occupants and uses such as cinema room could be accommodated with the main dwellinghouse if it was required as part of the living accommodation. As stated above the accommodation should be reasonable in the circumstances and should not be based on the unrestrained whim of the appellant. That is the case, here where the appellant wishes to provide an extensive range of accommodation, some of which replicates normal domestic uses and are not required for incidental purposes.
11. Issues relating to noise and disturbance and compatibility with the uses that may be taking place in the main dwellinghouse are not matters for the determination of the lawfulness of the outbuilding but are for the occupants to manage. That is the usual way of occupying a residential property and should not be used as justification for accommodating normal domestic residential uses in a separate outbuilding.
12. The appellant has also addressed the matter of character and appearance but that is not a material consideration in determining the lawfulness of an outbuilding under the terms of the GPDO.
13. I do not dispute that the uses are appropriate uses for a domestic property, but the duplication in the proposed garden room/outbuilding of entertainment and relaxation space that is also to some degree accommodated within the main dwellinghouse is of concern. In my judgement it cannot reasonably be argued that all of the proposed development is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
14. In coming to this decision, I have taken account of the range of evidence presented by the main parties, including other properties in the area and appeal decisions, but as I have indicated above, cases such as this are very much a matter of fact and degree based on the specific circumstances of the case. Therefore, I have determined this appeal based on the circumstances of

the site, the details of the proposed garden/outbuilding and the body of evidence before me.

Conclusion

15. I conclude that the outbuilding would not be required in its entirety for incidental purposes. As such it would not be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.
16. For the reasons given above I conclude that the Council's decision to refuse to issue a LDC was well-founded. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

A A Phillips

INSPECTOR