



Appeal Decision

Site visit made on 10 December 2024

by A Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 December 2024

Appeal Ref: APP/R3650/X/24/3338600

Mariners, 88 Petworth Road, Haslemere, Surrey GU27 3AU

- 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 J Leach against the decision of Waverley Borough Council.
 - The application ref WA/2023/02105, dated 28 September 2023, was refused by notice dated 21 November 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 the erection of new ancillary building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The description of the development as set out in the LDC application form is the 'the erection of new ancillary building'. Whilst the terms 'ancillary' and 'incidental' are often used interchangeably, they are distinctly different. An incidental use is one which is functionally related to the primary use. By definition, an incidental use cannot be one that is integral to or part and parcel of the primary use. An ancillary building is typically used as an extension of the primary use. For example, an outbuilding within the same planning unit as the dwellinghouse in use for the provision of additional living space.
3. The drawings submitted with the application indicate the building would be used as a garage. Therefore, I have determined the appeal on the basis that an LDC is sought for a building required for purposes incidental to the dwellinghouse, not an ancillary building. This is clearly the basis on which the appellant makes their case and on which the Council determined the application.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant an LDC is well-founded.

Reasons

5. An application under S192(1)(b) of the Town and Country Planning Act 1990 (the Act) seeks to establish whether any operations proposed to be carried out in, on, over or under land, would be lawful. In an application for an LDC, the onus is firmly on the applicant to demonstrate on the balance of probabilities that the proposed development would be lawful.

6. The Council contend that the height of the building and its eaves would fail to comply with paragraph E.1 (e) and (f) of Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). This is on the basis that the east elevation of the building would be on the same ground level as the existing driveway. Due to the sloping topography of the garden area, this would mean the land on which the building would sit would have to be raised as it is currently lower than the driveway.
7. The appellant confirms the spur serving the garage included on the drawings is indicative and could simply be an access over the existing lawned grass. It is not proposed that a spur created at the same ground level as the existing driveway forms part of the development. Drawing 1686/PD-202 includes the existing and proposed ground levels as remaining the same, indicating the proposed building would not be on a raised ground level but would follow the existing topography of the site. Accordingly, I do not consider that the height limitations set out in paragraph E.1 (e) and (f) would be breached.
8. Notwithstanding the above, the appeal site is in the Surrey Hills Area of Outstanding Natural Beauty (AONB) and therefore paragraph E.2 applies, which states 'In the case of any land within the curtilage of the dwellinghouse which is within...(a) an area of outstanding natural beauty; development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.'
9. Paragraph E.2's reference to 'In the case of any land within the curtilage of the dwellinghouse...' clearly includes all land within the curtilage, regardless of whether it is more or less than 20m from the wall of the dwellinghouse. Moreover, 'development is not permitted by Class E' includes all development that would be permitted under Class E. It makes no difference whether the development is more or less than 20m from the dwellinghouse; either way, it is not permitted development if there are existing buildings, enclosures, pools and containers more than 20m away which cover more than 10sqm.
10. The 'Permitted development rights for householders: technical guidance' 2019 states that the purpose of paragraph E.2 is to restrict the amount of permitted development located more than 20m away from the wall of a house. However, it does not state that paragraph E.2 *only* restricts development over 20m from the dwelling if development over 20m exceeds 10sqm. The same can be said for the Welsh Government's Technical Guidance: Permitted development for householders 2014. Regardless of the rationale behind it, the wording of paragraph E.2 is clear – 'development is not permitted by Class E.' If it was meant to mean development over 20m from the dwelling then it would say something akin to 'development over 20m from a wall of the dwellinghouse is not permitted by Class E...'; but it does not.
11. Similarly, the appellant argues, for the purposes of paragraph E.2, development more than 20m from the dwellinghouse only refers to Class E permitted development outbuildings. However, paragraph E.2 clearly states '...buildings, enclosures, pools and containers...'. Not only is it not restricted to outbuildings only, but there is no reference to them only being outbuildings that are deemed to benefit from Class E permitted development rights. I have had regard to the Welsh Government's Technical Guidance: Permitted

development for householders 2014 guidance on this and whilst it does refer to 'Total floor area of Class E outbuildings in this area not to exceed 10sqm: E.2(a)', that does not correspond with the wording of the GPDO, to which I must add greater weight.

12. There is no dispute that the total area of ground covered by buildings, enclosures, pools and containers situated more than 20m from any wall of the dwellinghouse exceeds 10sqm. Therefore, the proposal fails to satisfy paragraph E.2 and would not be permitted development, even though it would be less than 20m from the dwellinghouse.
13. I have had regard to the Counsel's opinion referred to me by the appellant and the two appeal decisions¹ referred to me that have conflicting conclusions on this matter. Nevertheless, on the correct reading of paragraph E.2, for the above reasons, I find the proposal would fail to meet the requirements of Class E of the GPDO and therefore would not be permitted development.

Conclusion

14. 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 erection of a new ancillary building is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

A Walker

INSPECTOR

¹ Appeal references APP/R3650/X/22/3313521 and APP/R3650/X/23/3315880