



Appeal Decision

Site visit made on 4 February 2025

by **N Thomas MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 March 2025

Appeal Ref: APP/C3620/X/24/3350039

Great Oaks, Snowerhill Road, Betchworth, Surrey RH3 7AQ

- 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 Courtney against the decision of Mole Valley District Council.
 - The application ref MO/2024/0937/PCL, dated 12 June 2024, was refused by notice dated 7 August 2024.
 - 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 erection of two outbuildings and the laying out of hardsurfaces within the curtilage of the dwelling for purposes incidental to the enjoyment of the dwelling.
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Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs was made by Mr P Courtney against Mole Valley District Council. This application is the subject of a separate Decision.

Preliminary Matters

3. The Council provided an appeal decision with its response to the application for costs. The decision had previously been referred to by both parties and I have taken it into consideration. The Council also provided new evidence with its final comments which I have not taken into account.
4. Planning permission¹ was granted to replace the existing dwelling on the site with a new dwelling on 1 October 2024. The application for an LDC seeks to ascertain the lawfulness of the development if begun at the time of the application. I have therefore considered the appeal on the basis of the circumstances on site when the LDC application was submitted on 12 June 2024.
5. I saw that two garage buildings have been built to the south side of the tennis court. They are not in the location proposed by the application for an LDC. I have not been advised that they are lawful and I have not taken them into account in my decision.

Reasons

6. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support his case. On appeal, the Inspector's role is to

¹ Ref MO/2024/1487/PLA

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 the planning issues raised by third parties cannot therefore be taken into account. 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 application, be lawful. The main issue is whether the Council's decision to refuse to grant the LDC was well-founded.

7. The decision turns on whether the outbuildings and hardsurfacing would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO). There is no disagreement that the outbuildings and hardsurfacing would be within the curtilage of the dwellinghouse and would fall within the scope of the relevant classes of the GPDO and I have no reason to conclude otherwise. The Council argues that the outbuildings and hardsurfacing are not required for a purpose incidental to the enjoyment of the dwellinghouse as such, due to their size in relation to the host property.
8. Great Oaks is a detached dwelling in a generously sized plot. It has no existing garaging but there is space to park several cars on the driveway to the front of the house. The proposed garages would be set to the side of the house at an angle to each other, with hardsurfacing between them. They would be accessed by a drive leading from the main driveway, which has been partially constructed. The garages would be substantial buildings, providing 5 bays and 3 bays of car parking respectively. Their purpose would be to provide storage for the appellant's classic car collection. The appellant collects limited edition and specialist cars and he wishes to store them securely and conveniently. The cars are of significant value and have been previously stored in a variety of locations but the appellant would prefer to have them on his property to enjoy them. The hardsurfacing would cover a large area between the two garage buildings.
9. It has been established by case law that an incidental use should be functionally related to the primary use, but not part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Regard must be had not only to the use to which the development would be put, but also to the nature and scale of that use in the context of whether it would be a purpose incidental to the enjoyment of the dwellinghouse. Whether a use should be regarded as incidental will be a matter of fact and degree. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and to determine whether the development is genuinely and reasonably required to accommodate the use and thus achieve that purpose.
10. The case of *Emin*² sets out that the scale of the activities is obviously an important matter, because there must be a prospect that the nature and scale of such activities go beyond a purpose merely incidental to the enjoyment of the dwellinghouse. The physical size of the buildings could therefore be a relevant consideration, in that they might represent some index of the nature and scale of the activities. The judgement states that 'the fact that such a building has to be required for a purpose associated with the enjoyment of the dwelling house cannot rest solely on the unrestrained whim of him who dwells there but connotes some

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909

sense of reasonableness in all the circumstances of the particular case'. The judgement also informs that the test to be applied is whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house. The size of the building in relation to the dwelling is relevant but not a conclusive factor.

11. Garages are common buildings to have within the curtilage of a dwelling, usually for the purposes of storing cars and domestic items and are therefore functionally related to the primary residential use of the planning unit. In this case, the garages would not be to provide storage for cars for everyday use but would be used in connection with the appellant's hobby. As a hobby use is functionally related it is capable of being incidental. However, the accommodation provided by the garages would be substantial in the context of the planning unit and the scale of the host building. Their scale is beyond what would commonly be found in the curtilage of a dwelling of this size as garages. As an index of the nature and scale of the activities, the size of the garages indicates that the activities cannot reasonably be considered to be ancillary or subordinate to the main use of the property as a dwellinghouse. I do not therefore find that the purpose of the garages would be incidental.
12. The hard surfacing would be used to manoeuvre vehicles and to access the buildings but appears larger than would strictly be required for those purposes. Due its large scale, the expanse of hardsurfacing indicates a scale of activities in the context of the planning unit that would not be incidental to the enjoyment of the dwellinghouse.
13. Overall, the evidence leads me to conclude, as a matter of fact and degree and on the balance of probability, that the scale of the activities goes beyond a purpose merely incidental to the enjoyment of the dwellinghouse and the development cannot therefore be considered to be incidental.
14. The appellant has referred to several appeal decisions. The appeal at The Old Rectory³ related to a large outbuilding that would accommodate a range of functions, including gardening, storage of bicycles, vehicles, racing vehicles, workshop and garden machinery storage. In that case, the Council's concern related to the scale of the building, rather than the scale of the functions themselves. While the building was large, the Inspector was satisfied that the proposed uses were incidental to the enjoyment of the dwellinghouse and the building was reasonably required for those purposes.
15. In the case of 1 Periwinkle Lane⁴, a garage to store three cars was considered to be reasonable. This was in addition to the existing garaging, although it is not clear how many cars were accommodated in total. The Inspector determined the case on the basis of the evidence before him, taking into account the scale of the building and the nature of the use.
16. At Somerson House⁵, the Inspector found that an outbuilding providing storage for a personal collection of 18 supercars as well as a gym and household storage space would be incidental to the enjoyment of the dwellinghouse. The Inspector

³ Ref APP/D2320/X/22/3291325

⁴ Ref APP/P0240/X/22/3305621

⁵ Ref APP/A1530/X/3291073

considered the building was genuinely and reasonably required and was not excessive for these purposes. It was considered to be subordinate to the large, detached dwelling set within extensive grounds. I note however that the decision did not turn on whether the scale of the activities would be incidental to the enjoyment of the dwellinghouse.

17. The appellant also refers to a case at Ashleyhay⁶, where an LDC was granted by the Council for two outbuildings for the storage of 8 cars, which were considered to be incidental to the enjoyment of the dwellinghouse. I note that there was no consideration in the planning officer's report as to whether the buildings were required for a purpose incidental to the enjoyment of the dwellinghouse.
18. These cases all confirm that it is necessary to make an objective planning judgement applying the principles established by case law and on the evidence before the decision maker. I recognise that there is a need for consistency but I have come to my own decision, having set out the reasons for doing so. My case is distinguishable from the cases put forward by the appellant. My judgement is that the scale of the activities is a decisive point and I have come to the conclusion that the development would not be incidental.
19. On the basis of the information before me, I conclude that the outbuildings and hardsurfacing would not be for purposes incidental to the enjoyment of the dwelling house as such and are not permitted development by virtue of Class E, Part 1 of Schedule 2 of the GPDO. Planning permission would therefore be required.

Conclusion

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for erection of two outbuildings and the laying out of hardsurfaces within the curtilage of the dwelling for purposes incidental to the enjoyment of the dwelling 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 (as amended).

N Thomas

INSPECTOR

⁶ Ref MO/2022/1234/PCL