

Appeals Decisions

Site visit made on 29 August 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 7th October 2025

Appeal A: Ref: APP/J1915/X/23/3336014

Little Croft, Ermine Street, Colliers End, Ware, Hertfordshire SG11 1EH

- Appeal A is made by Mr & Mrs A & K Borgia under section 195 of the Town and Country Planning Act 1990 against a refusal by East Hertfordshire District Council to grant a lawful development certificate.
- The application Ref: 3/23/1659/CLEO, as amended on 28 September 2023, was refused by notice dated 12 December 2023.
- The application was made under section 191(1).
- The development for which the certificate is sought is "The erection of two separate outbuildings within the curtilage of a dwellinghouse as a use incidental to the enjoyment of a dwellinghouse".

Appeal B: Ref: APP/J1915/W/24/3337130

Little Croft, Ermine Street, Colliers End, Ware, Hertfordshire SG11 1EH

- Appeal B is made by Mr & Mrs A & K Borgia under section 78 of the Town and Country Planning Act 1990 against a refusal by East Hertfordshire District Council to grant planning permission.
- The application Ref: 3/23/2083/FUL, dated 31 October 2023, was refused by notice dated 27 December 2023.
- The development is the "temporary use of outbuilding as C3 dwellinghouse during construction of primary dwellinghouse".

Appeal C: Ref: APP/J1915/W/24/3348151

Little Croft, Ermine Street, Colliers End, Ware, Hertfordshire SG11 1EH

- Appeal C is made by Mr & Mrs A & K Borgia under section 78 of the Town and Country Planning Act 1990 against a refusal by East Hertfordshire District Council to grant planning permission.
- The application Ref: 3/23/2094/FUL, dated 2 November 2023, was refused by notice dated 2 July 2024.
- The development is the "erection of a workshop and change of use of land to residential curtilage".

Decisions

Appeal A: Ref: APP/J1915/X/23/3336014

1. The appeal is dismissed.

Appeal B: Ref: APP/J1915/W/24/3337130

2. The appeal is dismissed.

Appeal C: Ref: APP/J1915/W/24/3348151

3. The appeal is dismissed.

Reasons for the decisions

Appeal A

Introduction

4. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the development as it existed at the time of the amended application on 28 September 2023. The planning merits of the development are not relevant to the appeal and there is no planning application before me.
5. I have called the two outbuildings 'the southern outbuilding' and 'the eastern outbuilding'. They were erected within the extensive curtilage of the former dwellinghouse, Little Croft, at a time when it was still in use as such (it is in the process of being replaced by a new dwellinghouse, which has planning permission and is nearing completion). The application indicates that the southern outbuilding was erected for the secure garaging of cars kept as a hobby and that the eastern outbuilding was erected as a games room, bar, home office, gym and ancillary residential accommodation for family members when they come to stay.
6. The Council refused the application for the following reasons: -
 - "1. The size, scale and use of the existing outbuildings as shown on drawing numbers: 502_GD_P002.3 P1, 1502_GD_P002.3 P3, 1502_GD_P007 P2 and 1502_GD_P008 P1 cannot reasonably be considered as being incidental to the enjoyment of the dwellinghouse and would fail to comply with Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
 2. The existing residential outbuilding as shown on drawing numbers: 502_GD_P002.3 P1, 1502_GD_P002.3 P3 and 1502_GD_P007 P2 has 4 no. air conditioning units attached to the rear of the building which fails to comply with Schedule 2, Part 14, Class G of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). *[My note. This reason relates to the eastern outbuilding. Class G concerns the installation of a chimney, flue or soil and vent pipe on a dwellinghouse. It has no relevance to the air-conditioning units on the eastern outbuilding.]*
 3. The existing garage outbuilding as shown on drawing numbers: 502_GD_P002.3 P1, 1502_GD_P002.3 P3 and 1502_GD_P008 P1 fails to comply with Schedule 2, Part 1, Class E.1 (e) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)." *[My note. This reason relates to the southern outbuilding.]*

7. Class E (a) permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The permission is subject to the restrictions (a) to (k) in E.1. The Council maintain that the southern outbuilding fails to comply with the restriction in E.1(e)(i), which limits the height of a building with a dual-pitched roof to 4 metres.
8. My understanding of the principles that apply to the phrase “any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such” in Class E (a) is as follows: -
 - The concept of Class E (a) is broad and a wide range of incidental purposes is permitted.
 - The incidental purposes must be connected with the running of the house or the domestic, recreational or leisure activities of its occupiers and the building must be required for those purposes, but it is primarily for the occupiers to decide what incidental purposes are to be enjoyed in the building.
 - In order to assess whether the purposes are incidental to the enjoyment of the house, their nature and scale are to be considered. There should be an element of subordination in land use terms in relation to the enjoyment of the house itself. The size of the outbuilding in comparison to the size of the house is a relevant, but not a decisive, factor. The comparison should be with the whole of the house, not just with its footprint, since this is the “dwellinghouse as such” which Class E (a) relates to.
9. I have been referred by the Council to previous lawful development appeals relating to outbuildings at Little Croft that were dismissed in 2017 and 2018 and by the appellant to lawful development appeals in other areas that were allowed in 2020 and 2022. These decisions illustrate the different approaches taken by inspectors, particularly with regard to the extent to which they investigate questions as to whether proposed buildings are genuinely and reasonably required in order to accommodate proposed uses or activities. Ultimately, the question whether the outbuildings in the present appeal are required for purposes incidental to the enjoyment of the dwellinghouse as such is a question of fact and degree, involving a planning judgment to be made applying an objective test of reasonableness in all the circumstances of this particular case.
10. The Council have adopted the approach that, even if individually the outbuildings may be incidental, they are not incidental when considered together. I do not consider that this is the correct approach. Class E (a) permits the provision of more than one building required for an incidental purpose and it seems to me that the control over the number of such buildings is the ground coverage restriction imposed by E.1(b).

The southern outbuilding

11. Mr Borgia collects, exhibits and races classic cars in his own personal time as a hobby and also spends time working on the cars. This is a type of leisure activity that falls within the wide range of incidental purposes that is permitted and for which an outbuilding may be required. Such an activity may need an

outbuilding that is larger than the dwellinghouse because of the amount of storage space that cars require.

12. At the time of my visit the southern outbuilding was being used for the secure garaging of classic cars. There were eighteen such cars, which were stored using a mechanical stacking system that enabled one car to be stored above another. The footprint of the outbuilding appears to be more than double the footprint of the dwellinghouse (as it was) and to be greater than its floor space as a whole. However, the curtilage is spacious and the outbuilding is no larger than what is required for the activity as it is presently being conducted; but there must be a point at which the number of classic cars garaged ceases to be an incidental hobby activity as such and the activity becomes a separate planning use on its own.
13. The issue that arises is whether the scale of the present activity is excessive in the particular circumstances that arise in this appeal, so as to take it beyond what can reasonably be regarded as a purpose incidental to the enjoyment of this dwellinghouse as such. As a matter of fact and degree, I do not consider that it is.
14. A further issue concerns compliance with the height limitation. The height of the southern outbuilding was measured at my visit and found to be 4.02 metres when measured from the surface of the gravel path alongside the western elevation of the outbuilding, which is the highest ground level immediately adjacent to the building. Whilst this is considerably less than the height of 4.2 metres referred to by the Council, it is still more than the 4-metre limit set by E.1(e)(i). This is a fixed limit that cannot be exceeded, even by a small amount, and a lawful development certificate cannot therefore be granted for the southern outbuilding owing to the evidence of its height as measured at my visit.

The eastern outbuilding

15. The eastern outbuilding comprises office space, a kitchen area, a living area with furniture and a bar, and three en-suite bedrooms with storage and wardrobe space. Although the outbuilding is currently providing living accommodation during the construction of the new dwelling, the layout of the rooms is the same as that depicted on the layout plan submitted with the application for the lawful development certificate and is consistent with the stated intention to include ancillary residential accommodation for visitors in the outbuilding.
16. As stated above, Class E (a) permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Government publication *Permitted development rights for householders: technical guidance* makes it clear that a purpose incidental to a dwellinghouse does not cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
17. No distinction can be made between living accommodation provided for visitors and living accommodation available to the regular occupiers of the dwellinghouse. In addition, for an outbuilding to be permitted development, all

of it must be required for incidental purposes, and not for a mixture of incidental and non-incidental purposes.

18. A lawful development certificate cannot therefore be granted for the eastern outbuilding.

Conclusion on Appeal A

19. I am satisfied that the Council's refusal of the application for the certificate is well-founded for the reasons I have explained above. Appeal A has therefore been dismissed.

Appeal B

20. This appeal relates to the continued use of the eastern outbuilding to provide living accommodation for a temporary period during the construction of the new dwelling. The Council refused the application for the following reasons: -

"1. The building by reason of its size and siting would be out of keeping with the pattern of development in the village and would constitute 'backland' development that is inappropriate development in the rural area, that would go beyond the provisions of temporary accommodation to house the occupants during construction works, contrary to Policies GBR2, VILL2 and DES4 of the East Herts District Plan 2018 and Policy SP9 of the adopted Standon Neighbourhood Plan.

2. Insufficient information has been submitted with the application to demonstrate how the building has met the climate change adaptation and mitigation policies CC1 and CC2. In the absence of this information, the development fails to accord with the policies and Policy Sp2 of the Standon Neighbourhood Plan.

3. The application lacks sufficient information by way of technical documentation and an appropriate mitigation scheme to ensure the air-conditioning units would not result in excessive noise for occupiers of residential properties, contrary to Policy ED2 and DSES4 of the East Herts District Plan."

21. In response, the appellants state that the first two reasons for refusal are incorrectly based on the application seeking full planning permission for a new dwelling and that the third reason is unfounded because the units have an extremely low noise output and are well away from neighbouring dwellings. As far as the third reason is concerned, I have no reason to believe that the noise of the units will disturb neighbours, but the matter could be dealt with by a planning condition if planning permission were granted.
22. This planning application was submitted on 31 October 2023 and was refused on 27 December 2023. The eastern outbuilding had no planning permission at the time and this remains the case following my decision on Appeal A. Planning permission was granted for the new dwellinghouse on 23 October 2023 and by now in October 2025 its construction has been completed with only some internal works being outstanding. The use of the eastern outbuilding to provide accommodation for a temporary period during the construction of the new dwelling is no longer justifiable. Appeal B has therefore been dismissed.

Appeal C

Introduction

23. This appeal seeks planning permission for a workshop that has been erected immediately to the east of the eastern outbuilding, together with its associated hardstanding, and also for permission to change the use to "residential curtilage" of a large area containing the workshop, the hardstanding and adjoining land to the east and north. This land is mainly grassland, but there is a wooded area with a stream and ponding in its northern part; its eastern boundary has mature trees and hedging and the southern and western boundaries are fenced. The application site is located within a Local Wildlife Site, Colliers End Meadows and Ponds, which has been designated locally because of its meadow grassland and ponds.
24. Since 'curtilage' is not a use of land, I have dealt with the proposed change of use as if it were for a change to a use for purposes incidental to the dwellinghouse.
25. The Council refused the application for the following reasons: -
- "1. The outbuilding and associated hardstanding, by reason of its size, scale, mass, form and siting, represents a harmful encroachment into the countryside which, cumulatively with the proposed change of use of the site to residential use and introduction of associated domestic paraphernalia would be to the detriment of the rural character and appearance of the site and the wider locality. The proposal would thereby be contrary to Policies GBR2, HOU12, DES2, DES3 and DES4 of the East Herts District Plan 2018.
2. Insufficient information has been submitted with this application to enable a full assessment of the impact of the development on a locally designated wildlife site, protected species, and whether a biodiversity net gain would be achievable. Therefore, the proposal would be contrary to Policies NE1, NE2 & NE3 of the East Herts District Plan (2018), Policy SP6 of the Standon Neighbourhood Plan and Section 15 of the National Planning Policy Framework (December 2023)."
26. The main issues in the appeal therefore concern the effect of the proposals on (i) the character and appearance of the application site and its surroundings and (ii) the Local Wildlife Site. I have considered these issues in turn.

The effect on the character and appearance of the site and its surroundings

27. The first reason for refusal states that the proposals are contrary to several policies in the District Plan. The appeal site is part of the agricultural land that has been identified in the District Plan as being in the Rural Area Beyond the Green Belt, which Policy GBR2 protects as a valued countryside resource. The proposals in the application are not within the types of development that this policy states will be permitted here. However, Policy HOU12 states that the change of use of land to residential garden may be permitted, if it (a) is not likely to result in an adverse effect on the character and appearance of the surrounding area and landscape, (b) is well related to other residential land and does not involve a harmful incursion into the countryside and (c) includes

the provision of appropriate landscaping and boundary treatment. Policies DES2, DES3 and DES4 set out standards for design and landscaping.

28. The workshop and its hardstanding are an intrusion of development into the open countryside which is harmful to its character and appearance. They are incompatible with Policy GBR2's objective of protecting the Rural Area Beyond the Green Belt as a valued countryside resource.
29. The use of this land for purposes incidental to the dwellinghouse conflicts with the terms of Policy HOU12 because, even if permitted development rights for residential activities were withdrawn, it would be an extensive and harmful incursion into the countryside that is very poorly related to other residential land, including the appellants'.

The effect on the wildlife site and protected species

30. The second reason for refusal states that the proposals are contrary to several planning policies. In order to address this matter, the appellants have since submitted an Ecology Appraisal, a Biodiversity Net Gain/Biological Impact Assessment, a Statutory Biodiversity Metric and a supporting habitat condition survey sheet. The Council have considered these documents and have concluded that an area of good-quality grassland has already been lost as a result of the construction of the outbuilding and the hardstanding and that the impact of the change of the land to residential use has not been adequately dealt with.
31. Policy NE1 indicates that development proposals, land use or activity likely to harm the integrity of a designated site will not be permitted unless it can be demonstrated that there are material considerations which clearly outweigh the need to safeguard the site. Harm has already been caused to the grassland by the construction of the workshop and the hardstanding. Even if permitted development rights for residential paraphernalia were withdrawn, further harm is likely to occur to the grassland, and the wooded area with its stream and ponding would be at risk, because of domestic and recreational activities likely to occur that would be beyond effective planning control. I have considered whether any of the reasons put forward by the appellants for their proposals would justify the approval of the application in spite of the conflict with Policy NE1. However, none of them calls for the carrying out of development beyond the already extensive curtilage of the dwellinghouse.

Conclusion on Appeal C

32. For the reasons given above, planning permission should not be granted and Appeal C has therefore been dismissed.

D.A.Hainsworth

INSPECTOR