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## Appeal Decision

Site visit made on 9 January 2012

**by Gloria McFarlane LLB(Hons) BA(Hons) Solicitor (Non-practising)**

**an Inspector appointed by the Secretary of State for Communities and Local Government**

**Decision date: 13 January 2012**

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**Appeal Ref: APP/J1915/X/11/2161385**

**Little Hocketts, 42 Burnham Green Road, Burnham Green, Hertfordshire, AL6 0NJ**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr F Jackson against the decision of East Hertfordshire District Council.
  - The application Ref 3/11/0762/CL, dated 28 April 2011, was refused by notice dated 25 May 2011.
  - 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 a proposed outbuilding.
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### Decision

1. The appeal is dismissed.

### Reasoning

2. From the facts the proposal has to be considered against Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 as amended (GPDO) which permits 'the provision within the curtilage of a dwellinghouse of (a) any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...' subject to specified limitations.
3. The Council refused the application because in its opinion the proposal could not reasonably be considered to be incidental to the enjoyment of the dwellinghouse and it would offend the limitation set out in E.1(d) because it would not have a dual pitched roof and it would be more than three metres in height.
4. Class E of the GPDO applies to a building that is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such'. The Courts have held that this should be interpreted to mean 'reasonably required' and the onus of proof is on the Appellant to show that, on the balance of probability, what is proposed is reasonably required for a purpose incidental to the use of the dwellinghouse. The proposed building would have garaging for three cars, a games room/gym some 5.3m by 9.5m, a glazed element some 5.2m wide and 1m deep, a kitchen and a shower room. It would have a floor area of some 144sq m and would be substantial structure.

5. Areas for garaging and a games room/gym are normally considered incidental uses but kitchens and shower rooms form part of primary living accommodation and are usually provided in the main dwelling. The Appellant maintains that the kitchen would be a utility room and that it would not contain cooking facilities, storage cupboards etc but it would be of sufficient size to contain these items. The glazed area with a fully opening glass door off the main room would be, in my opinion, an unusual feature in a room housing a snooker table and would be more likely to be found in the main house. On balance, taking these matters into account I consider that the Appellant has not demonstrated that all the building would have an incidental use.
6. In addition to limitations on use, there are a number of limits to what might be constructed under Class E. In this case the limitation is E.1 (d), which provides that development is not permitted if the height of the building, enclosure or container would exceed (i) 4m in the case of a building with a dual pitched roof, (ii) 2.5m in the case of a building, enclosure or container within 2m of the boundary of the curtilage of the dwellinghouse (which does not apply in this appeal) or (iii) 3m in any other case.
7. The Appellant says that the proposed roof would not offend E.1(d). The building would have, in effect, two parts and would have a ridge height of some 3.95m. The garage part would have a pitched roof and the games room part would have a separate pitched roof. There would be an element of flat roof linking these two parts. In addition there would be two gables, one at the front and one at the back of the building. The building would have a roof comprising ten tiled slopes, two tiled and glazed slopes and an element of flat roof. The term 'dual pitched' is not defined, but Guidance on the GPDO<sup>1</sup> advises that the height limit on a dual pitched roof of 4m can include hipped roofs with slopes on all four sides. In my opinion the proposed roof, which would comprise a number of different slopes well in excess of four, would be neither dual pitched nor hipped and it would not be 'a building with a dual pitched roof' (my emphasis) as permitted by Class E and described in the Guidance.
8. I have been referred to a number of appeal decisions relating to Class E of the GPDO. In the Bromley appeal<sup>2</sup> the Inspector did not consider the design of the roof because, I presume, that was not a reason for refusal. Similarly, in the Macclesfield appeal<sup>3</sup> the roof form was not considered by the Inspector. In the East Herts appeal<sup>4</sup> the Inspector found that a roof may have several slopes and be dual pitched but from the drawings<sup>5</sup> it appears that the roof in question was a pitched roof on an 'L' shaped building and therefore it was a different form from the proposed building in this appeal. In the Wokingham appeal<sup>6</sup> what was described by the Inspector as a 'complicated arrangement' of 'a series of four dual pitched roofs forming a square around the fenced area and the gutter' was found not to be permitted development. It appears to me that each of these decisions can be distinguished from the proposal in this appeal because of the different circumstances in each case.

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<sup>1</sup> Permitted Development for Householders – Technical Guidance. Issued by the Department for Communities and Local Government in August 2010

<sup>2</sup> APP/G5180/X/11/2145483

<sup>3</sup> APP/R0660/X/10/2120458

<sup>4</sup> APP/J1915/X/10/2122330

<sup>5</sup> Supplied by the Council with its final comments

<sup>6</sup> APP/X0360/A/11/2148324

9. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a proposed outbuilding was 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.

**Decision**

10. I dismiss the appeal.

*Gloria McFarlane*

Inspector



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## Appeal Decision

Site visit made on 6 January 2012

by **Les Greenwood BA(Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 January 2012

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**Appeal Ref: APP/J1915/D/11/2164617**

**1 Sunnyside Cottages, Violets Lane, Furneux Pelham, Hertfordshire  
SG9 0LL**

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
  - The appeal is made by Mr Kevin Bayes against the decision of East Hertfordshire Council.
  - The application Ref 3/11/1363/FP, dated 25 July 2011, was refused by notice dated 20 September 2011.
  - The development proposed is a first floor side extension.
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### Decision

1. I allow the appeal, and grant planning permission for a first floor side extension at 1 Sunnyside Cottages, Violets Lane, Furneux Pelham, Hertfordshire SG9 0LL in accordance with the terms of the application Ref 3/11/1363/FP, dated 25 July 2011, subject to the following conditions:
  - 1) The development hereby permitted shall begin not later than three years from the date of this decision.
  - 2) The development hereby permitted shall be carried out in accordance with the following approved plans: the location/block plan dated June 2011 and drawings No 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12.
  - 3) The materials to be used in the construction of the external surfaces of the extension hereby permitted shall match those used in the existing building.

### Main issue

2. The main issue is the effect of the proposal on the character and appearance of the building and the Furneux Pelham Conservation Area.

### Reasons

3. 1 Sunnyside Cottages is located in a small rural village outside of the Green Belt. East Hertfordshire Local Plan Second Review (LP) Policies GBC3 and ENV5 expect extensions to existing rural houses outside of the Green Belt to be of a scale and size which would not, of themselves or cumulatively with other extensions, disproportionately alter the size of the original dwelling or intrude

into the openness or rural qualities of the surrounding area. There is no indication in the sections of the LP provided that these policies aim to retain a stock of small dwellings. I therefore take it that the aim is to protect the character and appearance of the buildings and the rural area. LP Policies ENV1, ENV6 and BH6 have similar aims, particularly in respect of conservation areas.

4. Furneux Pelham is a dispersed village with a diverse range of vernacular buildings. 1 Sunnyside Cottages is one of a pair of semi-detached cottages in an elevated but well screened location near to the edge of the village and the conservation area. It was, evidently, originally diminutive in scale, but has been extended a number of times, with the overall increase in floorspace put at about 170%.
5. These extensions have been carried out sympathetically, but have nevertheless transformed the original cottage into a far more substantial and complex structure, articulated into a number of different elements. It appears to me that the other half of the building has also been much extended. The change in scale and form has been so extensive that the building has taken on a new character, and this must now be a consideration.
6. The appeal proposal would add on a further small extension, building a new first floor gable over part of an existing lean-to ground floor element. This very modestly sized proposal, at just over 10 sqm floorspace, would undoubtedly add cumulatively to the size of the building. However, it would not to my mind have any negative effect on the house's character. It would fit well with the existing form of the building, maintaining a degree of articulation of the different elements, but also providing a not unwelcome simplification of the southern and eastern elevations, facing the nearest road. The resulting building would, to the extent that it can be seen through the roadside bank and hedge, be an attractive structure which would complement the variety of other buildings within the conservation area.
7. Therefore, despite the minor increase in the size of the house, I conclude that the proposal would preserve and enhance the character and appearance of the building and the conservation area. On this basis, I find no conflict with the aims of the above-mentioned LP Policies.
8. I impose a condition listing the approved plans, for the avoidance of doubt and in the interest of proper planning. A condition requiring the use of matching materials is also necessary in order to ensure that the extension does indeed harmonise with the existing building.
9. For the reasons set out above, and having regard to all other matters raised, I conclude that the appeal should succeed.

*Les Greenwood*

INSPECTOR