The Planning Inspectorate

Appeal Decision

Site visit made on 13 March 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/J1915/X/16/3155140
Little Croft, Ermine Street, Colliers End, SG11 1EH

- 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 and Mrs A & K Borgia against the decision of East Hertfordshire District Council.
- The application ref 3/16/1138/CLE, dated 16 May 2016, was refused by notice dated 12 July 2016.
- 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 development is sought is proposed outbuilding.

Decision

1. The appeal is dismissed.

Reasons

2. The main issue to consider is whether the Council's decision to refuse the LDC was well-founded.

3. Little Croft is a detached four bedroom property situated in a spacious plot. The original dwelling-house's footprint is said to be somewhere in the region of 75 square metres; about 165 sq m taking account of permitted extensions. The LDC application relates to building operations comprising the erection of an outbuilding. It would have an 'L-shape' footprint. It would be 33 metres long by 7 m deep and 27 m x 7. It would be 3.8 m in overall height and eaves height would be 2.25 m; the structure would be set 2 m from any curtilage boundary. It would have a footprint of about 427 square metres. It would be located at the bottom of the garden. The outbuilding would be used as an office, a gymnasium, games room, home cinema and store rooms.

4. Mr and Mrs Borgia seek a declaration that the proposed development would be lawful if instituted or begun at the time of the application. The case is a simple one, namely, that the development does not require express planning permission by virtue of permitted development rights ['PD'] set out in The Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO']. Deemed planning permission is granted by virtue of Article 3(1). Classes of development described as PD are set out in Schedule 2 to the GPDO. Amongst other things, Class E grants a planning permission for the provision within the curtilage of the dwelling-house of any building required for a purpose incidental to the enjoyment of the dwelling-house as such, subject to conditions and limitations.

5. In order to comprise PD, all of the outbuilding must be within the curtilage and required for an incidental purpose; all of these words are important and constitute a basic criteria in Class E(a). Even if all of the physical parameters are met, failure to comply with basic criteria renders the development outside the scope of PD.

6. There is agreement that the outbuilding would fall within the curtilage and it would satisfy paragraphs E.1 to E.3. The Council argue that the size and scale of the proposed outbuilding cannot be reasonably considered as being incidental to the enjoyment of Little Croft. On behalf of Mr and Mrs Borgia, the planning agent vehemently disagrees and argues that the outbuilding would be used for incidental purposes. That the proposed size and scale would be required for the intended activities. The argument is that the Council has misdirected itself in applying the relevant tests when assessing the proposal against Class E.1(a). The submission is that once relevant principles of planning law are correctly applied to the facts and circumstances, a LDC should be granted. For all of reasons that follow I disagree with those submissions.

7. In Class E(a), what do the following words mean *...required for a purpose incidental to the enjoyment of the dwellinghouse as such*. The word 'incidental' describes something that occurs in connection with something else or is minor connoting subordination. Paragraph E.3 defines the keeping of domestic animals or pets for the domestic needs or personal enjoyment of the occupants of the dwellinghouse as an incidental purpose, but the GPDO does not actually define the meaning of Class E(a). It does not explain how Class E(a) must be applied in any particular circumstances. There is no statutory definition of the word incidental but case law provides authority for its interpretation[1].

8. A building that may be considered incidental to the enjoyment of a substantial dwelling with many occupants and large grounds may not be incidental if situated in the garden of a small cottage with a single occupant. It is therefore reasonable and necessary to consider the building in the particular context within which it is or would be situated. Size alone is not necessarily a determining factor and a wide range of outbuildings for different purposes may be permitted depending on the particular circumstances. In *Emin* the Court confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwelling-house. Physical size of a building in comparison to the dwelling-house might be an important consideration, but was not by itself conclusive. It was necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the building is genuinely and reasonably required or necessary in order to accommodate the use or activity and thus achieve that purpose. The word *required* should be interpreted to mean reasonably required. The words *as such* are also important. It is therefore reasonable to examine the justification as to the proposed building's size in relation to the intended purpose even where the physical tolerance is satisfied.

9. The test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier. But a hard objective test should not be imposed to frustrate the reasonable aspirations of an owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on particular circumstances.

[1] See *Emin v SSE [1989]* JPL 909, *Pêche d'Or Investments v SSE* [1996] JPL 311, *Rambridge v SSE & East Herts DC* QBD CO-593-96) and *Wallington v SSE & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942.

10. The argument is that the size and scale of any curtilage building is not defined in Class E. While there is no absolute limitation in percentage terms as to how small or large a building can be compared to the host dwelling, it must be demonstrated that what is proposed is genuinely and reasonably required for the intended purpose(s). Otherwise the GPDO would be open to abuse by proposals involving any size building meeting physical thresholds and being constructed for one stated purpose but then being used for another purpose.

11. In support of this LDC proposal the agent cites three other appeal decisions. He refers to these as examples where similar sized outbuildings have been allowed on the basis that they met Class E(a) criteria. The logical argument is that an LDC should be granted for this proposal. Inspector decisions are not Case Law nevertheless the findings and approach to a particular matter may be material. There is a need for consistency in the planning process but I am not bound to reach the same conclusions provided there are sound planning reasons for departing from their approach. Moreover, in the context of an LDC appeal, I must examine the factual evidence in a particular case about the history and planning status of the building or land in question, and the interpretation of any planning law or judicial authority. Although comparisons are made it should be borne in mind that I must evaluate the evidence presented in relation this particular proposal and site.

12. The following LDC decisions are cited as precedents. The Old Pump House, Marsh Lane Stanstead Abbots, allowed 24 August 2009 relates to an outbuilding incorporating a double garage, garden room and games room (162 sq m). The decision at 73 Downfield Road Hertford Heath, allowed 17 September 2010, relates to an outbuilding incorporating garaging, car port and office space (136 sq m). The outbuilding at 15 Channocks Lane Gilston, allowed 29 March 2016, would be a new triple garage, gym and games room[2]. I have reviewed all of these decisions but the proposed development can be distinguished on its particular facts. None of these permitted outbuildings included a home cinema whereas the proposed outbuilding would have an eight-seater home entertainment room (about 7 m wide and 7 m deep); that is a material difference.

13. Turning to the proposed outbuilding, the contention is that the cinema room would be for leisure purposes. However, exact detail of the main dwelling's permanent occupants who are likely to use the facility has not been provided. Vague and incomplete evidence has been submitted to show that the existing dwelling cannot provide this type of facility for its occupants. I am not satisfied that a home cinema of this size is genuinely and reasonably required.

14. The proposed quadruple garage would include two 5 m wide entrances and it would be 7 m deep. There is an existing large garage adjacent to Little Croft. I give limited weight to the assertion that Mr and Mrs Borgia have many cars, as precise detail has not been provided. For example, it is unclear how many motor vehicles they would actually keep inside the quadruple garage. Given the absence of specific detail showing who actually is a permanent occupant of the dwelling-house, it is unclear whether other residents require parking space. In addition to that, there is no plausible explanation as to why such a large garage is required because there is an existing garage. I find that the size and scale of the proposed garage is not reasonably required.

[2] These appeal decisions against refusal of LDC made by East Hertfordshire DC have the same prefix digits at this appeal ending with 2088016, 2122330 and 3134681.

15. Comparison between the proposed garage and those permitted at Downfield Road and The Old Pump House does not really stand up to scrutiny. The former had a garage for five motor vehicles but exact circumstances have not been submitted. The latter included the demolition of an existing garage and its replacement with a double garage within the LDC application. This is not the case here.

16. The agent says that the outbuildings permitted at Channocks Lane and The Old Pump House contained store rooms for garden equipment. Decision-makers opined that the size of that space was required to maintain the garden, store tools, garden furniture and other domestic accoutrements. Be that as it may, the proposed outbuilding would have a separate tractor store with a 5 m wide entrance. I acknowledge the domestic curtilage to Little Croft is large, but the nature and type of ground maintenance plant and machinery likely to be kept within the tractor store is unclear. This is because specific evidence has not been provided. In addition, there is proposed a separate store room, which would be positioned between the garage and cinema room, but it is unclear as to why this is required. There is insufficient evidence to show that the existing dwelling has no space for storage of domestic paraphernalia.

17. The size of the leisure facility at The Old Pump House and Channocks Lane was much bigger. The gymnasium would be around 20 sq m yet the one permitted at Channocks Lane was 40 sq m. I have seen nothing to show the nature and scale of gym equipment that would be installed in the outbuilding at Little Croft, however. The games room is shown to accommodate a table-tennis and pool table. It is contended that both require space around them for players to either play the ball or to line up their cue, but the agent admits that the games room at Little Croft is larger in floor area than that at Channocks Lane. There is no explanation why this facility cannot be provided in the main dwelling. There is an added complexity. The submitted plans show a changing room, two separate toilets, a shower room and a room labelled 'C'. There is no explanation why there is a need for separate games room, gymnasium and changing rooms/facilities to serve the occupants of the main dwelling.

18. Mr and Mrs Borgia own and operate security alarm business. The home office, which would be about 9.8 m wide and 7 m deep, is intended for use in connection with the administration of that business. The Downfield Road outbuilding included an office that was around 10 sq m smaller than the one proposed at Little Croft and the inference drawn is that must be acceptable. However, a plausible explanation as to why such a large space is necessary has not been advanced. The amount and type of office equipment that would be installed. Given the number of people likely to utilise the space, it is unclear why such a large home office is required. Additionally, there is nothing showing why space in the main dwelling cannot be utilised as a home office. I do not consider that the size of the home office is modest and commensurate with an office use incidental to the residential use of the main building.

19. An argument may well be advanced that larger facilities of the type proposed at Little Croft are genuinely required on the basis that people who do not normally reside at the property would visit for the purpose of using those facilities. For instance, extended family members or friends. The rationale in that respect fails to appreciate the meaning and application of Class E(a), because it is based on the need to accommodate those who reside elsewhere and not necessarily the requirements of the occupants of the dwelling-house itself.

20. Drawing all of the above threads together, I find that ambiguous, weak and incomplete evidence has been submitted to substantiate the claim that an outbuilding of this size and scale is genuinely and reasonably required for the intended uses. My assessment of the information presented indicates that, in all likelihood, the space required for purpose of garaging motor vehicles, home office, gymnasium, home cinema, store and tractor store would be excessive. As a matter of fact and degree, a building of this size would not be reasonably required for its intended purposes. It would be on a scale that would not be incidental to the enjoyment of the dwelling-house as such. On the particular facts and circumstances of this case, the proposed outbuilding would not meet the necessary requirement of Class E(a).

21. The case for Mr and Mrs Borgia has been forcefully put and centres upon previous appeal decisions within the district. My analysis of the particular facts and principles referred to above is broadly consistent with the cited appeal decisions. On the particular circumstances of this case, however, I have come to a different decision.

22. For the reasons given above, having regard to all other matters, I conclude that the Council's refusal to grant a LDC in respect of 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.

A U Ghafoor

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 13 March 2017

by A U Ghafoor BSc (Hons) MA MRTPI

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

Decision date: 24 April 2017

Appeal Ref: APP/J1915/X/16/3153082
Warrengate Farm, Money Hole Lane, Tewin, Hertfordshire AL6 0JD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ['the Act'] against a refusal to grant a certificate of lawful use or development ['LDC'].
- The appeal is made by Mr John Hesler against the decision of East Hertfordshire District Council.
- The application ref 3/15/1738/CLE, dated 21 August 2015, was refused by notice dated 13 October 2016.
- The application was made under section 191(1)(a) of the Town and Country Planning Act 1990 as amended[1].
- The use for which a certificate of lawful use or development is sought is described in the application form as follows: *Use of land to the east of the existing dwellinghouse amenity land (garden space) ancillary to the use of the property as a private dwelling (Use Class C3) for the purpose of the enjoyment of the occupiers of the dwelling house since 1935.*

Decision

1. The appeal is dismissed.

Preliminary matter

2. The applicant must precisely describe what is being applied for but the description of the existing lawful use given in the application form is not a planning land-use activity. The correct description of what use is being sought as lawful is the use of the application land for residential purposes incidental to the residential use of the dwelling-house. As convenient shorthand, I shall refer to this as the *incidental residential use*. All of the written representations refer to this residential use, and there is no prejudice caused to any party if I proceed on this basis, which I will do.

Inspector's reasons

1. The main issue is whether the Council's decision to refuse the LDC was well-founded. In this appeal, the onus of proof is firmly upon Mr Hesler whose evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make his version of events less than probable, there is no good reason to refuse the application, provided his evidence alone is sufficiently precise and unambiguous to justify the grant of a LDC, on the balance of probability[2].

[1] S. 191(1)(a) of the Act: if any person wishes to ascertain whether any existing use of buildings or other land is lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter.

[2] See *Gabbitas v SSE & Newham LBC* [1985] JPL 630. The authority of *Ravensdale Limited v Secretary of State for Communities and Local Government* [2016] EWHC 2374 (Admin) reviews the relevant case law regarding the onus of proof upon an appellant in s. 174(2)(d) appeal, which is similar to this type of case. Guidance is also available in the

2. Mr Hesler's submission is a simple one, namely, incidental residential use of the application land is lawful and falls within the scope of s. 191(2) and 171B of the Act[3]. According to *Richard O'Flynn*[4], I must examine whether there was a lawful existing use of the application land for incidental residential use. This matter is approached by considering whether a use of the land for residential purposes had commenced on or before 21 August 2005 (ten years before the date of the LDC application), which is the relevant date, and had continued since that date in which case it would have become immune from enforcement proceedings, due to the passage of time. A further consideration is whether, at the date of the LDC application (21 August 2015), a use of the land for residential purposes was lawful since it did not constitute development by virtue of the dwelling-house exception in s. 55(2)(d) of the Act[5].

3. The application land excludes the dwelling-house and land immediately around and about the building. It is mainly located to the dwelling's east and extends in an easterly direction towards woodland. It roughly forms a rectangular shape; the boundary to the east, north and south is defined by close-boarded timber fence. The boarder between the dwelling-house and application land has an irregular shape and is defined by vegetation. The application land and dwelling-house are not defined by a barrier and the land appears within the same field of view as the building and its immediate environs from different locations within the property. The evidence is that it was primarily used for agriculture, which is broadly consistent with its mainly undeveloped appearance and layout. Ms Cook and Mr and Mrs Barton suggest that it was part of wider agricultural land and that its use changed to orchard, grassland or vegetable patch, but photographic evidence suggests that it had been unmanaged and overgrown around September 2015.

4. While there is no subdividing barrier between the dwelling-house and application land, the latter is separate and generally unmanaged and appears open and empty in comparison to the former. It has a different character and appears much less like what one would label as garden. Indeed, at the time of my site visit, the land appeared uncultivated and the type and texture of grass is different. The application land has a different function to the rest of Mr Hesler's land, despite being in the same ownership. In my planning judgement there is a residential and agricultural use of land and both are not ancillary to a primary use. In applying *Burdle*[6] to the facts of this case, I consider that all of the land under one occupation constitutes the planning unit as it forms one undivided unit of occupation but it is in a mixed residential and agricultural use.

5. A material change of use requires a change in the definable character of the use of the land. The evidence should show that the incidental residential use of the application land started on or before the relevant date. The existence of an overgrown footpath or remnants of a pond and summerhouse do not affirm a residential use. None of these show when the actual change from agriculture to incidental residential use occurred.

Department's Planning Practice Guidance paragraph 001 reference ID: 17c-001-20140306 to paragraph: 014 Reference ID: 17c-014-20140306.

[3] S. 191(2) of the Act: Uses and operations are lawful at any time if – (a) no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force. S. 171B sets out time limits.

[4] See *Richard O'Flynn v SSCLG and Warwick District Council* [2016] EWHC 2894 (Admin).

[5] The following operations or uses of land shall not be taken for the purposes of this Act to involve development of the land; (d) the use of any buildings or other land within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such.

[6] See *Burdle and Williams v SSE and New Forest DC* [1972] 1 WLR 1207.

6. Mr Hesler has no direct knowledge of his own to show when the residential use commenced. He provides nothing firm to substantiate the claim that the material change of use occurred on or before the relevant date, or that the application land has been in continuous incidental residential use for a period of 10 years. Instead, he relies on anecdotal evidence to support the claim that the residential use started in 1935. However, the ownership certificate submitted with an application for planning permission in 1940 does nothing more than certify that the land does not form part of an agricultural holding. The historic survey plan and valuation report does not show when the change of use occurred or the nature of its residential use. In a similar vein, Ms Cook moved into South Barn in April 2003 and cannot provide detail of what happened in 1935. There is nothing from Mr and Mrs Barton to substantiate the claim that incidental residential use started at that time. I consider that none of this information shows the nature or scale of any residential use from 1935 onwards.

7. Ms Cook's evidence is that her property was sold by John Barton when he retired from farming. He also sold the majority of the land attached to the farm in circa 2002/2003, but retained those fields close to the farmhouse as grassland. In line with the lack of active farming, the land directly attached to the east of the farmhouse was used as garden, containing a vegetable patch, flowers and a hot tub in a summerhouse with the majority as grass, and there was no commercial use of the land. Mr and Mrs Barton state that the land has always been a garden but also an orchard. However, there is no plausible explanation as to the extent of any incidental residential use. The evidence presented is too weak to show residential use from 2002/2003 onwards, because it does not sufficiently substantiate an incidental residential use from that time onwards.

8. I find the quantum of evidence too ambiguous and unspecific as it does not adequately show the physical state of the application land on or before the relevant date, nor does it satisfactorily explain the type and level of residential activity for a continuous 10-year period. It does not clearly show the extent of domestic activity. There is no exact detail as to the frequency of use or how long the land had been used for residential purposes. For all of the reasons given in the preceding paragraphs, I am not persuaded that the definable character of the use of the application land changed from agriculture to incidental residential use on or before the relevant date. On the balance of probabilities, I find that there was no lawful existing use of the application land for incidental residential use at the date of the application.

9. The mere fact that the application land adjoins areas around and about the dwelling-house and is in the same ownership does not necessarily or automatically mean that it is curtilage land. In *Collins*[7] it was held that an area of rough grass that lay beyond well-maintained lawns near a dwelling-house was not part of the curtilage. In *James* the Court held that a tennis court some 100 metres from the house was not within its curtilage; the latter defines an area of land in relation to a building and not a use of land. There is no definition of the word 'curtilage' in the Act, but it is an area of land in relation to a building and falls to be assessed as a matter of fact and degree. The Oxford English Dictionary refers to the term as a small court, yard, garth, or piece of ground attached to a dwelling-house, and forming one enclosure with it and the area attached to and containing a dwelling-house and its outbuildings.

10. Curtilage is relevant to s. 55 (2) (d) of the Act and the Town and Country Planning (General Permitted Development) (England) Order 2015 ['the GPDO']. For example,

[7] See *Collins v Secretary of State and Epping Forest DC* [1989] EGCS 15 and *James v Secretary of State* [1991] JPL 550.

Class P, PA and paragraph X of Part 3 to Schedule 2 of the GPDO. It defines the term as a piece of land, whether enclosed or unenclosed, immediately beside or around the building or closely associated with and serving the purposes of that building or an area of land immediately beside or around the building. The relevant case law was reviewed in *McAlpine*. The Court defined the following characteristics of curtilage: it is confined to a small area about a building, intimate association with the land which is undoubtedly within the curtilage necessary to make the area under consideration part and parcel of that undoubted curtilage land, and that physical enclosure of the land is unnecessary. The Court of Appeal found in *Skerritts* that a curtilage to a building is not always small. A curtilage must serve the purpose of a building in some necessary or useful manner and considerations such as the physical layout of the land, past and present ownership and use or functions are also relevant[8].

11. The area immediately around and about the building is visually defined by outbuildings, laid to lawn and patio. These areas appear private and have a domestic appearance because of their intimate layout, close association and relationship with the dwelling-house. Due to the arrangement of outdoor furniture, access to a patio area and display of domestic paraphernalia, the area immediately around and about the building are connected to the house; they possess a sense of domesticity. In comparison to the size of the property, these are modest and serve a reasonably useful function as curtilage to the building.

12. In contrast, the application land appears set apart and disconnect from the dwelling-house. Visually, all of this area appears physically separate from the land closest to the building given its location and positioning. Despite remnants of a footpath and pond, the texture and type of grass combined with the area's layout is different to areas around and about the dwelling. The application land does not appear or seem to have a close association with the dwelling. It does not have an intimate relationship with the land which is undoubtedly within the curtilage. Additionally, the evidence about the historic agricultural use shows that the area was distinctly disconnect and separate from the dwelling-house. As a matter of fact and degree, and on the circumstances of this particular case, I find that the application land cannot be regarded as part of the curtilage to the dwelling (Warrengate Farm). At the date of the LDC application - 21 August 2015 - the use of the application land for residential purposes was not exempt by operation of law.

13. Even if an alternative view prevails and the land is found to be within the curtilage to the building, the evidence presented does not sufficiently show when and how this vast area was appropriated as curtilage to the dwelling-house. The type and nature of its incidental residential use is unclear. The information lacks detail as to the level, extent and scale of any domestic activity taking place on the application land, when and for how long is unclear. There is meagre information showing it had been used for ancillary or incidental purposes in connection with the residential use of the dwelling-house. There is simply nothing of substance at all.

[8] See *Sinclair-Lockhart's Trustees v Central Land Board* [1950] 1 P&CR 195, *Methuen-Campbell v Walters* [1978] P&CR 693, *Att. Gen Ex Rel. Stucliffe v Calderdale BC* [1982] P&CR 399, *Debenhams plc v Westminster City Council* [1987] 1 All ER 51 (mainly to do with rates, hereditament, and listed buildings), *Dyer v Dorset CC* [1988] 3 WLR 213, *McAlpine v SSE* [1995] JPL 843 (*McAlpine*) and *SSETR and Another v Skerritts of Nottingham Ltd* [2000] EWCA Civ 60 (*Skerritts*) (the Court of Appeal), *Denis Lowe v FSS and Tendring DC* [2003] EWHC 537 (Admin), *Sumption and Sumption v Greenwich LBC and Rokos* [2007] EWHC 2776, and *R (ona of Gore) v SSCLG and Dartmoor National Park Authority* [2008] EWHC 3278 (Admin).

14. Therefore, on the available evidence, I am not able to draw any firm conclusion that, on 21 August 2015, the use of the application land fell within the scope of s. 55(2)(d) of the Act, and was exempt from the meaning of development in s. 55(1).

Conclusion

15. For all of the reasons given above and on the available evidence, I am not persuaded that the LDC sought should be granted, because the onus of proof has not been discharged. This does not necessarily preclude the submission of a further application if better evidence is subsequently available. Thus far, I am afraid, insufficient evidence has been presented to discharge the burden of proof.

16. I therefore conclude that the Council's refusal to grant a LDC in respect of the claimed residential use of the application land was well-founded and that the appeal should fail.

17. Accordingly, I will exercise the powers transferred to me in section 195(3) of the 1990 Act.

A U Ghafoor

Inspector

The Planning Inspectorate

Appeal Decision

Site visit made on 3 April 2017

by Chris Couper BA (Hons) DiP TP MRTPI

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

Decision date: 26 April 2017

Appeal Ref: APP/J1915/D/17/3168362
Robins Nest Farm, Robins Nest Hill, Little Berkhamstead, Hertfordshire SG13 8LL

- 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 Terry Bambridge against the decision of East Hertfordshire District Council.
- The application Ref 3/16/2133/HH, dated 22 September 2016, was refused by notice dated 18 November 2016.
- The development proposed is described as demolition of existing extension and construction of new wing to house as per previous application agreed 3/16/0157/HH and amendment to LPA 3/15/0485/HH with change to roof design from pitched to gambrel to accommodate full disability access to infirmary/loft room from lift, through access and disabled access to wc/shower room. Materials change from render in orange on timber of 1st/2nd floor gable rear to matching materials brick as per ground floor. Window positions changed to accommodate as built structure and to utilise and recycle previously used windows.

Decision

1. The appeal is dismissed.

Procedural matter

2. Whilst I would ordinarily identify the main issues in an appeal, given the Council's contention that the development that has been carried out is of a materially different shape and design to that depicted on the application drawings, I have considered first that matter in my reasoning below.

Reasons

3. Robins Nest Farm is set back from the road, on a large plot in the Green Belt. Planning permission was previously granted for an extension ('the approved extension'), as set out in the above description. However, for the reasons given in the grounds of appeal, and to afford the applicant suitable disability access by lift to his infirmary room, the development was not carried out in accordance with the approved drawings.

4. Consequently, revised drawings were prepared and the application the subject of this appeal was submitted. However, in its officer delegated report ('report') the Council states that the development as carried out is materially different from those submitted plans.

5. On my site visit I observed that there are significant differences between the development as carried out and the development as depicted on the submitted drawings. In particular, the form of the roof is markedly different with the lower section of the gambrel roof appearing to have a steeper pitch and the upper section a shallower pitch than depicted on the drawings, thus also giving the development a greater second floor bulk. Furthermore, the top of the north-facing first floor opening appears to be higher relative to the adjacent dormer window than show on drawing no. A/A200/PR/001 Rev D. Drawing no. 2/A600/CN/020 Rev A showing sections through the roof is also inconsistent with that drawing. There are also other discrepancies between the style and position of the fenestration as built and as depicted, such as the west facing dormer windows on drawing no. A/A200/PR/002 Rev E.

6. In its report the Council states that it based its decision on the submitted drawings rather than the works that have taken place. However, the appellant makes no reference to those discrepancies, and whilst he apparently wishes to retain the development as built, his statement makes comparisons between the approved extension and the extension as set out on the inaccurate drawings.

7. I note that Little Berkhamsted Parish Council's representation was one of 'no comment'. However, given the significant differences between the form and appearance of the development as built, and the development as set out on the drawings, I cannot be certain which scheme third party representations were based on, or whether other parties who did not comment based on the submitted drawings might otherwise have done so. The assessments by the two main parties are also based on different schemes.

8. With regard to the Council's decision, the main issue is the scheme's design and its impact on the character and appearance of the host property, although its impact in relation to the site's location in the Green Belt would also need to be considered, as would the needs of the appellant. However, given the significant discrepancies that I have noted, I am unable to properly assess those matters; and I cannot be certain that if I did base my decision on either the development as built or the development as set out on the drawings, that all parties' interests would have been properly considered.

9. Consequently, the appeal is dismissed.

Chris Couper

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 11 April 2017

by Philip Willmer BSc Dip Arch RIBA

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

Decision date: 05 May 2017

Appeal Ref: APP/J1915/D/17/3168777
Ye Olde Off Licence, Baldock Road, Cottered, Hertfordshire, SG9 9PU.

- 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 and Mrs R and A Crofton against the decision of East Hertfordshire District Council.
- The application Ref 3/16/2285/HH, dated 6 October 2016, was refused by notice dated 1 December 2016.
- The development proposed is a two-storey side extension.

Decision

1. The appeal dismissed.

Main Issues

2. I consider the main issues to be the effect of the proposed development on the architectural integrity of the host property and therefore whether it would serve to preserve or enhance the character or appearance of the Cottered Conservation Area.

Reasons

3. The property the subject of this appeal, Ye Olde Off Licence, is a two-storey dwelling. It is located in a built up residential part of Cottered, within the Cottered Conservation Area. It also falls to be considered as lying in the Rural Area Beyond the Green Belt. The area surrounding the appeal site is characterised by a rich mix of buildings the design of which has drawn on a variety of architectural styles, forms, materials and details.

4. Following the removal of an earlier single storey catslide to the rear, the original dwelling has been previously extended by the addition of a part single/part two-storey rear extension. This extension, to the rear of the dwelling, maintained the gable roof form of the original property.

5. The appellants propose a further extension comprising a small ground floor addition, the removal of a catslide roof over part of the existing kitchen and the construction of a new first floor addition along the north east elevation of the later rear addition.

6. Policy GBC3 of the East Herts Local Plan Second Review April 2007 (LP) indicates that limited extensions or alterations to existing dwellings in accordance with LP Policy ENV5 within Rural Areas Beyond the Green Belt would

be acceptable. LP Policy ENV5 states that an extension to a dwelling or erection of outbuildings will additionally be expected to be of a scale and size that would either by itself, or cumulatively with other extensions, not disportionately alter the size of the original dwelling nor intrude into the openness or rural qualities of the surrounding area.

7. LP Policy ENV1 requires extensions, along with other things, to be of a high standard of design and layout and to reflect local distinctiveness. LP Policy ENV6 goes on, amongst other things, to require that extensions should be to a design and choice of materials of construction, either matching or complementary to those of the original building and its setting. LP Policy BH5 considers the design of extensions and alterations to unlisted buildings in conservation areas. It has particular regard to the need for such extensions to be sympathetic in terms of scale, height, proportion, form, materials and siting in relation to the building itself, adjacent buildings and the general character and appearance of the area.

8. The proposed extension would be set in from the rear wall of the earlier addition and from the gable flank wall of the original dwelling. Due to the double pitch form of the roof, the ridgeline of the extension would sit below that of the main ridge of the original dwelling and the later rear extension. In terms of its three-dimensional form therefore, I consider the extension would be subservient to the current dwelling as previously extended.

9. Nevertheless, whether the increase in floor area is 81% as asserted by the Council or 76% as calculated by the appellants, it is clear that when considered cumulatively the previous and proposed additions, in terms of the building's overall massing, would disportionately alter the size of the original dwelling. Consequently, although due to its location the proposal would not intrude into the openness or rural qualities of the surrounding area, I consider that the development would not accord with LP Policy ENV5.

10. In terms of its form I have found that the proposed extension would be visually subservient. Further, in relation to its height, proportions, choice of materials and siting the extension would not be unacceptable. However, I consider that the introduction of new hipped roofs here would result in a jarring alien feature that would detract from the architectural integrity of the host building. This would be the case despite the other local examples of this roof form that have been drawn to my attention. In turn, and albeit that there would be limited views of the north east elevation of the property from the public domain, I consider that the extension as designed would thereby cause harm to the character and appearance of the conservation area.

11. The National Planning Policy Framework (the Framework) requires great weight to be given to the conservation of designated heritage assets, which include conservation areas. It draws a distinction between substantial harm and less than substantial harm to such an asset. For the latter, which applies here, the test is that the harm should be weighed against public benefits, including securing the optimum viable use.

12. The proposed development, in terms of its construction, would provide some limited economic benefit. However, given the harm that has been identified I conclude that the public benefits would not outweigh that harm, or the conflict

that the development would have with the objectives of Section 72 of the Planning (Listed Buildings and Conservation Areas) Act 1990, the Framework and LP Policies GBC3, ENV1, ENV5, ENV6 and BH5 as they relate to the quality of development and the preservation or enhancement of the character or appearance of conservation areas.

13. In reaching my conclusion I have been mindful of the proposed change in status of Cottered to a Group 2 village and the change in emphasis of emerging Policy GBR2 at criterion (d) away from the comparison of an extension to the size of the original dwelling towards its impact on the character and appearance of the area. However, the emerging local plan has yet to complete its examination process and I can therefore only give this limited weight in my deliberations. Nevertheless, in any case I have found that in this instance the extension would cause harm to the wider area.

Conclusions

14. For the reasons given above and having regard to all other matters raised, including the support of three direct neighbours for the proposal and the lack of objection from consultees (including the Council's historic conservation advisor) or third parties, I conclude that the appeal should be dismissed.

Philip Willmer

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 11 April 2017

by Philip Willmer BSc Dip Arch RIBA

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

Decision date: 08 May 2017

Appeal Ref: APP/J1915/D/17/3169260
5 East Riding, Tewin Wood, Tewin, Hertfordshire, AL6 0AP.

- 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 C. O'Farrell against the decision of East Hertfordshire District Council.
- The application Ref 3/16/2367/HH, dated 20 October 2016, was refused by notice dated 22 December 2016.
- The development proposed is a single storey front extension.

Decision

1. The appeal is dismissed.

Main Issues

2. I consider the main issues in this case are:

   a) whether the proposal constitutes inappropriate development in the Green Belt;

   b) the effect of the proposal on the character and appearance of the host property; and

   c) its effect on existing protected trees.

Reasons

3. The property the subject of this appeal, 5 East Riding, is a large two-storey dwelling located in a substantial mature corner garden plot. Tewin Wood, which is characterised by similar large dwellings in large plots, is situated within the Metropolitan Green Belt.

4. Number 5 is set back in the plot from the road behind dense hedge. To the eastern boundary there is a large oak tree which is the subject of Tree Preservation Order 410 (TPO).

5. The appellant proposes a single storey contemporary styled and detailed addition to the eastern façade of the house that would be in contrast to the more vernacular design of the existing dwelling. The proposed extension would be single storey with large areas of glazing under a flat roof.

Whether the proposal constitutes inappropriate development in the Green Belt

6. Policy GBC1 of the East Herts Local Plan Second Review April 2007 (LP) allows for limited extensions to dwellings within the Green Belt. LP Policy ENV5 requires extensions, cumulatively with those previously added, to not disproportionately alter the size of the original dwelling house. These policies are broadly consistent with the National Planning Policy Framework (the Framework), which advises at paragraph 89 that the construction of new buildings should be regarded as inappropriate in the Green Belt. However, one of the six exceptions given to this is the extension or alteration of a building provided that it does not result in disproportionate additions over and above the size of the original building.

7. From the Council's evidence, and this is not contradicted by the appellant, I understand that the original house had a floor area of approximately 248.9 square metres, that it has previously been extended (planning permissions 3/87/0587/FP, 3/99/0189/FP, 3/99/0965/FP and 3/03/1651/FP) and that these earlier additions cumulatively represent an increase in floor area of some 152 square metres. Accordingly the Council states that the total increase in floor area to date has been some 61%. I also note that the proposed addition would have a floor area of 48 square metres or so. When added to the earlier approved extensions this would amount to an increase in floor area of about 200 square metres or so. According to the Council's evidence, therefore, if this extension were to be built the cumulative overall increase in floor area, as a percentage of the size of the original dwelling house, would I understand be about 80%.

8. However, the appellant has referred me to planning permission Ref: 3/03/1651/FP. I understand this earlier development included for the removal of an existing detached double garage in the location of the extension the subject of this appeal. From the drawing provided the garage was located close to the existing house such that it could, in my opinion, be considered a normal domestic adjunct to the house.

9. The appellant states, and the Council has upon enquiry not raised an objection to his assertion, that if the removal of the garage were taken into account when calculating the proposed cumulative increase in floor area over the size of the original house it would only be some 61% and not 80% as the Council suggested. On this basis, in terms of the cumulative increase in floor area alone, I consider that the proposed extension would not disproportionately alter the size of the original dwelling house.

10. However, the Framework refers to 'size', consequently in addition to floorspace it is the overall size increase in terms of volume and external dimensions that also need to be taken into account. Having regard to the mass and form of the original dwelling house and while taking into account the previous removal of the former double garage, even assuming that it only had a flat roof, I do not consider on balance that due to its size and form that the proposed addition, when considered with the earlier extensions, would cumulatively result in disproportionate additions over and above the size of the original building.

11. I therefore conclude, in respect of the first main issue, that the proposal is not inappropriate development.

Character and appearance

12. The proposed single storey flat roof extension has been designed in a contemporary style that would contrast with the traditional, more vernacular design of the host property.

13. In my judgement, given the proposed addition's single storey form, height, fenestration pattern and contrasting modern design, I believe that it would not significantly add to the overall visual mass of the main house. Indeed it would appear as a subservient addition that would, in my judgement, add to the overall visual interest of the host property.

14. I therefore conclude in respect of the second main issue that the proposed extension would accord with the objectives of the Framework and LP Policies ENV5 and ENV6 as they, along with other things, relate to the quality of development and the need for extensions to compliment the host property.

Effect on existing protected trees of amenity value

15. From both the application drawings and my observations on site it is clear that the proposed extension would be built within the root protection area of a large oak tree protected by the TPO. The appellant has not submitted an arboricultural impact assessment so that the potential impact on the protected tree can be assessed.

16. I appreciate that it is likely to be in the interests of the appellant to maintain the verdant nature of the appeal site and therefore not to lose any trees. While the Council did not ask for an arboricultural implications assessment at the application stage, given the proximity of the tree to the extension, it was nevertheless, in my opinion, reasonable to assume that one would have been necessary for the proper consideration of the application and subsequently this appeal.

17. I note that when the earlier application (Ref: 3/03/1651/FP) was considered that the Council addressed the potential impact on the trees by way of a condition requiring the retention and protection of the existing trees. However, based on the drawings before me, it is clear that those trees were in all probability smaller than the oak tree here and sited further from the extension proposed at that time.

18. I consider that construction of the extension would be likely, in terms of ground works (foundations, floor construction, drains, services etc.), to impact on the roots of the TPO tree. Further, given the proximity of the tree and its size it may also, over time, impact on the proposed extension and occupants (by way of the dropping of leaves/debris on the flat roof, overshadowing of the roof-light terrace areas etc.) which in turn might well lead to pressure to remove overhanging branches or ultimately its removal altogether. Due to the proximity of the tree to the extension this would be difficult for the Council to resist.

19. I therefore conclude in respect of the third main issue that it would not be appropriate to consider this appeal without the benefit of a detailed arboricultural survey and report. The proposal would thereby be contrary to LP Policies ENV1, ENV2 and ENV11 as they relate, amongst other things, to the

protection of existing trees and the desirability of minimising the loss or damage of any important landscape features.

Conclusions

20. I have concluded that the proposed extension would not be an inappropriate form of development. I have also found that as designed the extension would not cause harm to the character and appearance of the host building. However, these considerations are outweighed by the potential unacceptable harm to the oak tree, the subject of a TPO. To my mind this is a compelling objection.

21. Accordingly, for the reasons given above and having regard to all other matters raised, I conclude that the proposal is not in accordance with the development plan, when read as a whole, and that the appeal should be dismissed.

Philip Willmer

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 3 April 2017

by Chris Couper BA (Hons) DiP TP MRTPI

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

Decision date: 26 April 2017

Appeal Ref: APP/J1915/D/17/3168485
20 Bishops Road, Tewin Wood, Tewin AL6 0NW

- 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 and Mrs Mercer against the decision of East Hertfordshire District Council.
- The application ref: 3/16/2602/HH, dated 16 November 2016, was refused by notice dated 12 January 2017.
- The development proposed is 'remove existing bay and roof structure to the rear of the house, replaced with new bay windows and flat roof balcony area. Removal of existing conservatory, replaced by single story orangery with glass roof lantern to the rear of the property. Existing front door, porch area and window to the front of the house to be removed and replaced with proposed front door and porch area. Removal of existing windows to the left elevation and replaced by proposed window. Internal changes include removal of existing wall between kitchen and dinning room, proposed utility area and proposed internal double door and single door sets'.

Decision

1. The appeal is allowed and planning permission is granted for the removal of the existing bay and roof structure to the rear of the house, replaced with new bay windows and a flat roof balcony area; the removal of the existing conservatory, replaced by a single storey orangery with a glass roof lantern to the rear of the property; the existing front door, porch area and window to the front of the house to be removed and replaced with a proposed front door and porch area; the removal of the existing windows to the left elevation and replacement with a proposed window; internal changes to include the removal of an existing wall between the kitchen and the dining room, a proposed utility area and a proposed internal double door and single door sets at 20 Bishops Road, Tewin Wood, Tewin AL6 0NW, in accordance with the terms of the application, Ref 3/16/2602/HH, dated 16 November 2016, 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: drawing nos. 5934-1 Rev C and 5934-2 Rev C.

   3) The materials to be used in the construction of the external surfaces of the masonry walls, and the roof of the porch hereby permitted shall match those in the existing building.

Main Issue

2. The main issue is whether or not the proposal constitutes inappropriate development in the Green Belt, having regard to the National Planning Policy Framework and any relevant development plan policies.

Reasons

3. The site is located within the Green Belt where the National Planning Policy Framework ('Framework') states that inappropriate development is, by definition, harmful, and should not be approved except in very special circumstances. It regards the construction of new buildings as inappropriate, unless, amongst other things, at bullet point 3 of paragraph 89, it is the extension or alteration of a building, provided that it does not result in 'disproportionate additions' over and above the size of the 'original building'.

4. In addition to the Framework, the Council's decision refers to policies GBC1 and ENV5 of the East Herts Local Plan Second Review 2007 ('LP'). However, those policies pre-date the Framework, which states that in such circumstances, due weight should be given to relevant policies according to their degree of consistency with it.

5. LP policy GBC1 sets out that limited extensions or alterations to existing dwellings in the Green Belt in accordance with policy ENV5 may be allowed. Amongst other criteria, policy ENV5, which applies to dwellings within and outside the Green Belt, sets out that extensions to houses outside the main settlements and villages should, cumulatively, be of a scale and size that would not disproportionately alter the size of the original dwelling, nor intrude into the openness of the area. Consequently, whilst there are some differences between the LP policies and the Framework, I concur with the appellants that its overall thrust broadly aligns with the national approach.

6. No. 20 Bishops Road is a large detached dwelling on a landscaped plot. The Council sets out that it had an original floor area of around 200sqm. However, it calculates that extensions to the side, front and rear have added 190sqm, amounting to around a 95% increase in floor area. It estimates that the replacement of the conservatory with an orangery would result in a net increase of 2sqm, and a cumulative floor area increase of 96%. The appellant has not contested those figures, and I have no reason to dispute them.

7. The Council contends that as the extensions to the original building amount to disproportionate enlargements, any further enlargement would be inappropriate development. In the Green Belt it has typically considered extensions of around 50% of the original floor area to be proportionate, and has cited appeal decisions where floor area increases of 69% and 74% were found to be disproportionate. However, I agree with the Council that any purely mathematical calculation must be used with care, and tempered by an assessment of actual harm.

8. The proposed orangery would have a broadly similar maximum height and depth to the conservatory, and would be only very marginally wider. In terms of size it would be virtually a like-for-like replacement. The proposed replacement porch would be an open-fronted structure, with little solid bulk, and it would be visually contained within the dwelling's broader footprint.

9. Consequently, whilst the Council states that the scheme would result in a slight increase in floor area, I agree with the appellant that the proposal in effect represents largely cosmetic enhancements which would not materially add to the size of the dwelling. Whether or not previous extensions to the original building have amounted to disproportionate additions, I am satisfied that as this development would largely replace existing extensions with no material increase in size, this scheme would not result in a disproportionate addition.

10. Although both parties refer to permitted development rights, given my conclusions, I have not found it necessary to consider that matter further.

11. For the above reasons, the scheme would not be inappropriate development in the Green Belt, and would not conflict with the Framework, or with LP policies GBC1 and ENV5. Furthermore, it would not conflict with emerging policy GBR1 of the East Herts Draft Plan 2016 which requires applications to be considered in line with the Framework.

12. Impact on openness is implicitly taken into account in the exception at bullet point 3 of Framework paragraph 89. Consequently, although the Council additionally contends that the scheme would intrude into the Green Belt's openness, having concluded that the development would not be inappropriate, it is not necessary for me to separately assess its impact on openness.

13. Turning to the matter of conditions, I have considered those suggested by the Council against the Framework's tests. In addition to the standard time limit condition, in the interests of certainty, I have imposed a condition requiring that the development be carried out in accordance with the approved drawings. Various facing materials, including for flat-roofed areas and the frame of the orangery and its lantern roof, are set out on the drawings. Consequently, my third condition requiring matching materials, which is imposed in the interests of the character and appearance of the host property, is amended from that more generalised condition suggested by the Council.

14. Summing up, the scheme would not be inappropriate development in the Green Belt and would therefore not harm its openness. Consequently, and having regard to all other matters raised, the appeal is allowed.

Chris Couper

INSPECTOR