The Planning Inspectorate

Appeal Decision

Site visit made on 14 July 2015

by Alan Woolnough BA(Hons) DMS MRTPI

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

Decision date: 7 August 2015

Appeal Ref: APP/P5870/X/14/2227399
221 Woodcote Road, Purley, Surrey CR8 3PB

- 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 & Mrs J Ford against the decision of the Council of the London Borough of Sutton.
- The application ref no D2014/70087/CPU, dated 23 July 2014, was refused by notice dated 19 August 2014.
- The application was made under section 192(1)(b) of the 1990 Act as amended.
- The proposed development for which a LDC is sought is described on the application form as: 'Single storey detached garage/pool house with small drive extension (less than 5m²)'.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the formal decision.

Procedural Matter

1. Notwithstanding the description of development given on the application form, as set out above, I find that the proposal is more accurately described as: 'The erection of a single storey detached building for use as a double garage, garden store and swimming pool with shower and changing rooms, to be used for purposes incidental to the enjoyment of the dwellinghouse as such, and the construction of an additional area of hardstanding'. I will determine the appeal on this basis. No injustice to any party arises in doing so.

The Site and the Proposal

2. The appeal property is a detached dwelling that occupies a corner plot some 940 square metres in area. On the evidence before me, which has not been challenged, the original dwelling had a footprint of approximately 66.5 square metres. However, it has been greatly extended such that, by the time of the LDC application, it covered well over three times that area. At the time of my visit, the rear garden contained a large garage and storage shed at the far end and an area of raised decking immediately adjacent to the house. A swimming pool and smaller shed shown on the submitted plans as *in situ* when the application was made had already been removed.

3. The Appellants wish to replace the existing garage and storage shed with a single storey outbuilding that would contain the facilities described above. This would have a footprint of about 107 square metres and be positioned at least 2 metres from the nearest curtilage boundary. The dual-pitched roof would

have maximum eaves and ridge heights of 2.495 and 3.951 metres respectively. The driveway serving the existing garage would be enlarged by means of additional hardsurfacing some 4.91 metres in area.

Reasoning

4. In seeking a LDC, the burden of proof is firmly on the Appellants to demonstrate on the balance of probabilities that, at the time of the application to the Council, the proposed development would have been lawful. To this end, they rely on Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO) which, at that time, granted deemed planning permission for certain categories of permitted development[1].

5. These are set out in Schedule 2 to the GPDO and are subject to certain conditions and limitations. The categories relevant to the Appellants' case are Classes E and F of Part 1 of Schedule 2. Class F defines as permitted development 'the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such'. The Council makes no case to the effect that the hardsurfacing element of the proposal does not fall to be assessed under Class F.

6. The small size of the area of hardsurfacing and its position within the site are such that the condition to which some development permitted by Class F was subject does not apply in this case. I therefore conclude on the balance of probabilities that this element of the scheme would have benefitted from deemed planning permission at the time of the LDC application and, accordingly, would have been lawful. The Council presents no argument to the contrary.

7. Turning to the proposed building, Class E included 'the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such'. There is agreement between the parties that none of the size, coverage or locational limitations to which Class E was subject is breached by the proposal. I concur. However, the Council contends that Class E did not apply to the scheme as, in its perception, the outbuilding is not required for a purpose incidental to the enjoyment of the dwellinghouse as such.

8. Case law arising from the judgment in *Emin v SSE & Mid Sussex DC* [1989] EGCS 16 sets out the test to be applied in this regard as '...whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house'. In applying that test regard should be had to '…the use to which it is proposed to put a building and to considering the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse'.

9. The size of the outbuilding in relation to that of the dwellinghouse is an important consideration in this regard but is not by itself conclusive. The Court held that the term 'incidental to the enjoyment of the dwellinghouse as such'

[1] The 1995 Order has now been replaced by the Town and Country Planning (General Permitted Development) (England) Order 2015, which came into force on 15 April 2015. However, the appeal falls to be determined with reference to the time of the LDC application, in accordance with section 192(2) of the 1990 Act as amended. The 1995 Order thus remains relevant for the purposes of my decision.

should not be interpreted on the unrestrained whim of the householder but connotes some sense of reasonableness in the circumstances of the particular case. The judgment also makes clear that the appropriate question to be asked is '...whether the proposed buildings are genuinely and reasonably required or necessary in order to accommodate the proposed use or purpose and thus achieve that (incidental) purpose'. This general principle was reiterated in *LB Croydon v Gladden* [1994] 1 PLR 2.

10. The term 'required' is therefore interpreted for the purposes of applying Class E of Part 1 of Schedule 2 to the GPDO as meaning 'reasonably required'. I am satisfied that, in principle, facilities such as a double garage, garden store and swimming pool with shower and changing rooms may be regarded as reasonably required for incidental purposes. All are facilities that residential occupiers might reasonably aspire to in seeking to improve their quality of life. Nor is it unreasonable to assume that such facilities would be genuinely incidental to the domestic enjoyment of the property by future occupiers as well as the Appellants.

11. Moreover, I do not find a disparity between the size of the envisaged outbuilding, the scale of the proposed facilities and the contention that it would be put to purposes incidental to the enjoyment of the dwellinghouse. Having been extended, the property is now very substantial and capable of accommodating a large family. The outbuilding would be set a considerable distance from the main dwelling, albeit still within the residential curtilage and, unquestionably, would be subordinate to it in terms of volume. The fact that its footprint would be about 45% larger than the cumulative area covered by the structures that are proposed to be, or have already been, demolished does not of itself signal that its use could not be required for genuinely 'incidental' purposes.

12. It is unclear why the Council has drawn comparison between the sizes of the proposed outbuilding and the *original* dwelling. The fact that the latter has a footprint smaller than that of the proposal has very little relevance to my assessment, which must be made in relation to the dwelling as it stood on 23 July 2014. In any event, relative floor areas must also be taken into account. In doing so, it must be borne in mind that the dwelling comprises two storeys. Having regard to *Wallington v SSW* [1991] 1 PLR 87, the proposed facilities would not, in my assessment, exceed what might reasonably be required by a single household occupying a property of this size.

13. The argument that it might be possible to provide some of the proposed facilities within the dwelling itself assumes that existing accommodation thus re-deployed is not reasonably required by the occupiers in its present use. Such an assessment is largely subjective and open to wide interpretation, which tempers the weight that I attribute to it. In any event, my internal inspection of the dwelling revealed no shower facilities or area that could function as changing rooms associated with the swimming pool on the ground floor, or any accommodation within the property as a whole that was obviously surplus to requirements.

14. Although the Council suggests that the Appellants have not demonstrated a need for the proposed facilities, it is difficult to envisage what more they might say in this respect, over and above what is included in the appeal submission. It is sufficient for the purposes of Class E that the additional accommodation

would be of a kind that can be regarded in general terms as 'reasonably required'. Significance should not be attributed to the fact that the designations of proposed rooms were changed between the appeal application and an earlier LDC application. The assessment of lawfulness must be made on the basis of the current submission.

15. For the same reason, the fact that the demolition of existing structures or the specific uses to which rooms within the building are put cannot be 'conditioned' is an irrelevance. Should a scheme be implemented which retained items that are specified for removal, or put parts of the building to uses that are not annotated on the submitted plans, then this would be a departure from any LDC granted pursuant to this appeal, albeit that the certificate would still function as a benchmark for assessing the lawfulness of any alternative. The same applies to fears that the building might be used for business purposes associated Mr Ford's occupation as a builder. In any event, there is nothing of substance before me that points to such an intention.

16. The Council has referred me to a number of examples where appeals against refusals to grant LDCs for 'incidental' buildings have been dismissed on appeal. However, whether or not a building would be 'incidental' is a matter of fact and degree, such that determination in that regard requires a judgment to be made in relation to the specific circumstances of each individual case. I find nothing in the decisions before me to suggest that any is so similar to the case in hand as to dictate its outcome. Some neighbouring residents have questioned the planning merits of the proposal. However, these are not the criteria against which lawfulness is assessed and can play no part in my decision.

17. I therefore conclude on the balance of probabilities that the intended outbuilding was, at the time of the LDC application, required for purposes incidental to the enjoyment of the dwellinghouse as such. This being so, it would have benefited from deemed planning permission pursuant to the GPDO and would have been lawful.

Conclusion

18. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

19. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Alan Woolnough

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 23 July 2014 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed development would have benefitted in its entirety from deemed planning permission pursuant to Article 3 of, and Classes E and F of Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995 as amended.

Signed

Alan Woolnough

Inspector

Date: 7 August 2015

Reference: APP/P5870/X/14/2227399

First Schedule

The erection of a single storey detached building for use as a double garage, garden store and swimming pool with shower and changing rooms, to be used for purposes incidental to the enjoyment of the dwellinghouse as such, and the construction of an additional area of hardstanding in accordance with the scheme depicted in drawing nos 14/2053/2B, 14/2053/3B and 14/2053/4A.

Second Schedule

Land at 221 Woodcote Road, Purley, Surrey CR8 3PB.

NOTES

This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful on the certified date and, thus, were not liable on that date to enforcement action under section 172 of the 1990 Act as amended.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

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Plan

This is the plan referred to in the Lawful Development Certificate dated:7 August 2015

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Scale not stated