
Appeal Decision

Site visit made on 11 August 2022

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 August 2022

Appeal Ref: APP/N1730/X/21/3278127

36 Compton Road, Church Crookham, Fleet GU52 6JG

- 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 James Kneller against the decision of Hart District Council.
 - The application Ref 20/02743/LDC, dated 30 October 2020, was refused by notice dated 12 February 2021.
 - 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 the erection of a proposed outbuilding under Part 1 Class E of the GDPO¹.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. In this case that turns on whether the development falls within Schedule 2, Part 1, Class E of the GPDO, specifically whether it is required for a purpose incidental to the enjoyment of the dwellinghouse.

Reasons

4. The appeal property is a detached 1½ storey house, with rooms in the roof space. The proposed outbuilding would be sited in its side garden, 1.8m from its side wall and set back from the front wall of the house. It would be some 5.4m wide, 17.92m deep, 2.5m high (or slightly less) to its eaves and 4m high to the pitch of its roof, a footprint of approximately 95m² compared to that of the house of 130m², all as measured by the appellant.
5. The submitted floor plan shows a roughly rectangular shaped building of two main internal rooms: a larger games room containing a snooker table and a smaller gym room off which would be an ensuite WC/shower room.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

6. Class E of the GPDO grants planning permission for the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to ground coverage and height limitations. The site of the proposed building would be within the curtilage of the dwelling. The height limitations of Class E would not be exceeded, nor would the ground coverage, but the Council refused to issue an LDC because it was not satisfied, due to lack of evidence of the proposed building's intended use, and due to its size and layout, that it is required for a purpose incidental to the enjoyment of the dwellinghouse as such.
7. There is no statutory definition of 'incidental' in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers and indicates that games rooms and gym areas can be considered to be incidental to the enjoyment of a dwellinghouse. In the *Emin*² case it was held that the relative sizes of an outbuilding and the dwellinghouse can be an important consideration but is not in itself conclusive for the purposes of Class E. However, the building must be required for some incidental purpose in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.³ In other words, each case must be decided on its own particular circumstances.
8. The Council's case is that no evidence has been submitted by the appellant to demonstrate that the facilities within the proposed outbuilding are reasonably required for the occupiers of the dwelling. Specifically, it argues that neither the cover letter submitted by Nova Planning with the application, nor the two legal opinions (at both application and appeal stages) comprise such evidence.
9. The Nova Planning letter, to the extent that it deals with the incidental issue rather than the curtilage or Class E criteria issues, merely alleges that the Council's position in considering that the inclusion of a WC may be considered beyond incidental is 'questionable' when compared to two other recently (at the time) approved LDCs for Class E development in the District. That allegation certainly does not amount to any evidence or information sufficient to establish the outbuilding's reasonable requirement for a purpose incidental to the enjoyment of this dwellinghouse.
10. Paragraphs 22-25 of the legal opinion of 6 October 2020 address the incidental point. Paragraph 22 in particular sets out that as a matter of fact and degree, the rooms in the proposed outbuilding 'would be connected with the leisure and fitness activities of the occupiers of the main dwellinghouse'.
11. But nothing in that legal opinion, nor in Nova's covering letter, nor even in the second legal opinion dated 29 May 2021 submitted with the appeal explain why the occupier(s) of the house require such facilities in what is, in terms of floor area when compared to that of the house itself, a quite substantial building that would occupy a very large portion of the property's side garden.

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

³ As set out in relation to the other established caselaw mentioned by the Council in its delegated report

12. I agree with the Council that caselaw indicates that the test in such cases is objective reasonableness. Based on the information the appellant has supplied, both at application stage and at appeal, it is difficult to understand how the proposed outbuilding can reasonably be required for a purpose incidental to the enjoyment of the dwellinghouse as such.
13. Consequently, I agree with the Council that it has not been established by the appellant – on whom the burden squarely rests – that the leisure facilities contained in the proposed outbuilding are reasonably required for the occupier(s) of the house, to which it is claimed they are incidental. Indeed, the appellant has offered no explanation at all in this regard.
14. In coming to this conclusion, I have taken into account the *Peché d’Or Investments*⁴ case raised in the submitted legal opinions. I accept that the *Peché d’Or* judgment confirmed that it is an error of law to exclude, in principle, the provision of a shower room and WC from the scope of the Class E permitted development right. I also accept that neither the size of the proposed building, nor its ‘configuration’, nor the fact that it could subsequently be put to residential use, are in themselves justified reasons for concluding that it is not reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
15. But the lack of any explanation by the appellant as to why the outbuilding and its leisure facilities is required and by whom casts significant doubt as to whether it is reasonably required for purposes incidental to the use of the dwellinghouse within the curtilage of which it would be situated. *Peché d’Or* established and subsequent caselaw confirmed that it is a matter of fact and degree, having regard to the particular building and accommodation and the circumstances of the case, as to whether such an outbuilding can be excluded or not from Class E.

Conclusion

16. For these reasons I conclude that the Council’s refusal to grant a certificate of lawful use or development in respect of the erection of a proposed outbuilding under Part 1 Class E of the GDPO was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in S195(3) of the 1990 Act as amended.

Nick Fagan

INSPECTOR

⁴ *Peché d’Or Investments v SSE & Another* [1996] JPL 311

Costs Decision

Site visit made on 11 August 2022

by Nick Fagan BSc (Hons) DipTP MRTPI

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

Decision date: 24 August 2022

Costs application in relation to Appeal Ref: APP/N1730/X/21/3278127
36 Compton Road, Church Crookham, Fleet GU52 6JG

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
 - The application is made by Mr James Kneller for a full award of costs against Hart District Council.
 - The appeal was against the refusal of a certificate of lawful use or development for the erection of a proposed outbuilding under Part 1 Class E of the GDPO¹.
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Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance (PPG) advises that costs may be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process.
3. The application is made on the grounds that the Council failed to consider the appellant's legal opinion submitted at application stage and as a result decided the LDC application on the basis of glaring legal errors, which constitutes unreasonable behaviour. The applicant maintains that these legal errors resulted in the Council determining the application based on subjective considerations which have no legal basis in the consideration of such LDC applications, whereas the LDC should clearly have been granted.
4. The Council's delegated report does not specifically mention the legal opinion and does not specifically address the *Peché d'Or* legal judgement. But it does address in detail other relevant caselaw relating to the issue of whether a building would be incidental to a particular dwellinghouse. It also sets out, as do the Council's comments in relation to the appellant's appeal statement, that the applicant has failed to explain why the facilities in the proposed outbuilding are reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse, as he is required to do by established caselaw.
5. In my decision I explain why I agree with the Council's reasons for refusing the LDC application and why I am therefore dismissing the appeal. Plainly therefore, the Council has addressed the relevant caselaw and has fully justified its decision to refuse the application, including backing up its arguments at appeal.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

6. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated. Consequently, an award of costs is not justified.

Nick Fagan

INSPECTOR