Appeal Decision

Hearing held on 8 September 2009
Site visit made on 8 September 2009

by Katie Peerless **Dip Arch RIBA**

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

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Decision date:
22 September 2009

Appeal Ref: APP/W0530/X/09/2101282
10 Church Road, Teversham, Cambridgeshire CB1 9AZ

- 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 J D Barker against the decision of South Cambridgeshire District Council.
- The application Ref S/1451/08/LDC, dated 15 August 2008, was refused by notice dated 4 December 2008.
- 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 an extension to a curtilage building known as the Piggery.

Decision

1. I dismiss the appeal.

Site and surroundings

2. The appeal property contains former agricultural buildings converted to a dwelling under a planning permission granted in 1999[1] and, at that time, the residential curtilage of the new dwelling was confirmed. The site contains a range of connected buildings, which includes the main living accommodation and garaging, ranged around a central courtyard. The building that is the subject of this appeal is known as the 'Piggery' and is a detached single storey structure sited some 22m to the rear of the main house, within the garden. It has brick walls and a slate roof, but is in a somewhat dilapidated state and is presently used for garden storage and as a games room.

3. There is no dispute between the parties that this building is within the residential curtilage of the dwelling or that the site lies within the Teversham Conservation Area.

4. The appellant seeks a Certificate of Proposed Lawful Development (LDC) for the extension of the Piggery by the addition of two, single storey, square rooms, each about 4m x 4m, leading off a new glazed corridor which would run along the south west elevation of the building.

[1] Ref: S/1294/99/F

Reasons

5. The Town and Country Planning (General Permitted Development) Order 1995 (GPDO) was amended in 2008 and the provisions of the new version came into effect on 1 October of that year. Any applications for LDCs made on or after that date are now to be considered under the revised version of the GPDO, but for earlier applications, the previous version will still apply. The appellant originally made his application for the LDC, on line, on 15 August 2008 and followed it up on the same day with a signed and dated letter, enclosing the application fee.

6. Some two months later he was contacted by the Council, who explained that the original application form had not been signed or dated and asked him to do this. He was, apparently, told to insert the date on which the form was first sent to the local planning authority. Upon receipt of the amended form, the Council validated the application on 9 October 2008 and submits that this is now the relevant date and the application should therefore be considered under the new version of the GPDO.

7. At the Hearing, the Council agreed that, under the previous GPDO, the proposal would have fallen within Class A.(3)(a)(i) by reason of being an extension of more than 10 cu m to a curtilage building within a conservation area and therefore it would be considered as an extension to the main dwellinghouse. Provided that the extension had a volume less than the maximum permitted 115 cu m, it would have met all the other restrictions and consequently have been development permitted under Class A.

8. The appellant accepts that a LDC issued under the old GPDO would not authorise works that are no longer permitted development in the updated version, although he considers that the issue of such a certificate might assist any future application he might make for a similar development. However, whilst maintaining that the Council had not acted properly in the validation of his application and that the relevant date should have been August 2008, he also suggested at the Hearing that it might be more helpful if he withdrew this argument so that the application could be considered under the new regime.

9. If the application concerned an already existing development, the date of the application would be a crucial matter in determining whether or not a Certificate should be issued, as S192 (4) of the TCPA notes that, whilst the lawfulness of any use or operations for which a certificate is in force shall be conclusively presumed, this will only be the case where there has been no material change before the operations are begun. As the provisions of the GDPO have now changed, and the permitted development rights in respect of curtilage buildings no longer contain the relevant reference to conservation areas, such a material change has occurred and an LDC issued for August 2008 would no longer authorise the implementation of the proposal.

10. However, in this case, where the development has not yet taken place, I consider that there would be no prejudice to either party if I adopted the suggestion that I take the October date as the relevant one. The issue of a certificate under the old regime would be of no practical use to the appellant in authorising the development he wished to carry out or in supporting a further application for an LDC under the current regime, whether or not his proposals fall within development permitted under the new version of the GPDO.

11. I shall, therefore, draw no conclusions on the circumstances of the application date and consequent validation of the application, but consider that it is open to me to take the pragmatic approach and agree to consider the appeal under the current version of the GPDO, as requested by both parties.

12. Although the appellant is clear that he does not intend the building ever to be occupied as an independent dwelling, the submitted plan shows that the proposed new accommodation would include additional primary living accommodation, in the form of a kitchen. Such primary accommodation is taken to be part of the normal facilities that could be expected to be provided within a dwellinghouse. Previous appeal decisions from the Secretary of State have established that such accommodation would not be considered as being used for purposes categorised as *'incidental'* to the enjoyment of the main house and would not therefore be permitted by Class E. *'Incidental'* purposes are regarded as being those connected with the running of the dwellinghouse or with the domestic or leisure activities of its occupants, as distinct from ordinary living accommodation.

13. In *Rambridge v SSE (1996)* the court held that Class E does not permit a building that is designed from the start as primary residential accommodation. In *Peche D'Or Investments v SSE (1996)* the court rejected the proposition that a building that had been built for *'incidental'* purposes under Class E could, a day later, be changed to primary residential accommodation. However, if the building had genuinely been constructed for incidental purposes, planning permission was not required for a later change, provided the building remained within the same planning unit.

14. It was agreed by the Council, at the Hearing and in its representations, that, as the Piggery is an authorised existing curtilage building, it could now be altered internally to include primary living accommodation such as a kitchen and bedrooms, provided it remained part of the same planning unit as the main house. Nonetheless, to be classed as permitted development under the revised Class E, any extension to the building could only be for accommodation required for purposes incidental to the enjoyment of the original dwellinghouse.

15. The appellant suggested that the accommodation he wishes to add to the building is, in his view, *'incidental'* to the main living accommodation, but from the definitions outlined above, I am not persuaded that this is the case. Whilst the study shown on the proposal drawing could fall within this category, a kitchen is part of the normal facilities that one would expect to find within a dwellinghouse and part of the day to day living facilities found there. It cannot therefore be regarded as subservient or used for an *'incidental'* purpose as defined above.

16. The appellant also suggests that the extension to the building could be regarded as an extension to the main house, as it has always been part of the curtilage since the previous agricultural buildings were restored and converted. However, the Piggery is clearly separated from the other buildings on the site, it does not form part of the existing living accommodation and the GPDO makes a clear distinction between permitted development relating to curtilage buildings and to the main dwelling. It is not therefore correct that the Piggery can be considered as part of the principal dwelling.

17. The appellant notes that, under the revised GDPO, he would have scope to erect a far greater volume of building within the curtilage of the house than is proposed in the scheme before me. The original planning permission did not, apparently, restrict permitted development rights and it may well be that the appellant is correct in his view, provided that any curtilage buildings were used for the *'incidental'* purposes discussed above or any extensions to the main house fell within the limitations of the current Class A. However, whilst this 'fall back' position may be a material consideration in the determination of any planning application for development not permitted by the GPDO, it is not relevant to the interpretation of the permitted development rights conferred by the Order, as considered in this appeal.

18. Therefore, for the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of an extension to the curtilage building known as the Piggery 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.

Katie Peerless

Inspector

DOCUMENTS

1 Letter of notification and circulation list