



---

# Appeal Decision

Site visit made on 20 November 2012

**by Alan Woolnough BA(Hons) DMS MRTPI**

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

**Decision date: 17 December 2012**

---

**Appeal Ref: APP/U2235/X/12/2177741**

**Millfield House, Headcorn Road, Staplehurst, Kent TN12 0BU**

- 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 Mrs Helena Jones against the decision of Maidstone Borough Council.
- The application ref no MA/11/1238, dated 11 July 2011, was refused in part by notice dated 9 March 2012.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The proposed development for which a LDC is sought is described in a letter dated 21 July 2011 which forms part of the application as 'the erection of an extension on Millfield House and an ancillary building in the residential curtilage of Millfield House'.

**Summary of Decision: The appeal is dismissed.**

---

## Procedural matters

1. The proposed development is not described on the LDC application form. However, a description is given in a letter from the Appellant to the Council dated 21 July 2011, as set out in the above heading. I shall use this as the basis for my determination of the appeal.
2. Whilst not referred to in the description of proposed development, the installation of solar panels on the roof of the dwelling is referred to in a statement which accompanied the application and depicted in the application drawings. The Council granted a LDC relating to the installation of the panels, on the same application, on 9 March 2012. My decision is therefore confined to those elements of the proposal that have been refused a LDC, namely the erection of the extension and outbuilding.
3. Although referred to by the Appellant, I cannot have regard to planning merits considerations such as the use of previously developed land, sustainable construction or the provisions of national and local policy in determining the appeal. My decision must be confined to matters of law.

## The extension

4. The proposed extension would take the form of a single storey structure with a ridged roof. It would have an L-shaped footprint, wrapping around the entire eastern (side) and southern (rear) elevations of the existing dwellinghouse. Sheds currently located to the immediate east of the dwelling would be removed. The fact that the addition would be structurally independent from the dwelling itself is an irrelevance, as it would still be linked thereto by means

of expansion joints. It is therefore an extension, as distinct from a freestanding structure, for the purposes of planning law.

5. Indeed, the Appellant presents her argument as to lawfulness on this basis. She contends that the erection of the extension would, at the time of the application, have benefitted from deemed planning permission pursuant to Article 3 of the Town and Country Planning (General Permitted Development) Order 1995 as amended (the GPDO), by reason of constituting permitted development, and would therefore have been lawful. The Appellant relies in this regard on the provisions of Class A of Part 1 of Schedule 2 to the GPDO, which defines as permitted development the enlargement, improvement or other alteration of a dwellinghouse.
6. She argues that the extension complies with all the limitations and conditions to which that definition is subject. However, the Council counters that the proposal does not comply with limitation A.1(h)(iii), which specifies that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall forming a side elevation of the original dwellinghouse and would have a width greater than half the width of the original dwellinghouse.
7. The Appellant draws attention to the fact that the existing house is 5.6 metres wide and that the extension would project only 2.7 metres (less than half that width) beyond its eastern side elevation. The Council does not challenge these dimensions and I have no reason to question their accuracy. However, the Council points out that, as measured along its rear elevation, the extension would, on the Appellant's figures, be 8.3 metres wide, thus exceeding the entire width of the dwellinghouse by a considerable margin.
8. I agree that, applied literally and precisely, the wording of A.1(h)(iii) excludes the proposed extension from Class A, there being no provision in statute or case law for the subdivision of proposals to be implemented as single operations into component parts for the purposes of applying the GPDO. Moreover, Government guidance in *Permitted development for householders: Technical guidance* (the PDTG), published in August 2010 for the express purpose of clarifying how various aspects of the 2008 amendments to the GPDO should be interpreted, supports the Council's stance. A diagram at the top of page 26 of the PDTG conveys, very specifically, the view that such extensions do not benefit from deemed permission.
9. The Appellant pursues an argument to the effect that, considered individually, the side and rear components of the proposed extension could comply with the relevant criteria in limitations A.1(e) and A.1(h) respectively if separation were maintained between them. However, in doing so, she is essentially questioning the underlying logic of the legislation itself rather than the associated guidance. In any event, it is apparent that, to benefit from these provisions, such separation would need to be material, whereas none at all is proposed in this case. Moreover, a 'two stage' approach to L-shaped extensions is specifically addressed on pages 26 and 27 the PDTG, where it is identified as unlawful.
10. Notwithstanding this, the Appellant also challenges the status and reliability of the PDTG as a means of interpreting the GPDO, pointing out that it is not statutory and, in the light of what might be deemed lawful by reason of A.1(e) and (h), questioning its underlying logic and thus the reliance which should be

placed on it. I acknowledge that it is ultimately a matter for the decision-maker as to what weight is given to non-statutory guidance and that some Inspectors interpreted the relevant provisions of the GPDO differently prior to the publication of the PDTG. I am also aware that, post August 2010, some have questioned the guidance and note the various appeal decisions cited by the Appellant in this regard. Nonetheless, I am mindful that, in the introduction to the PDTG, it is stated that its purpose is to give 'an explanation of the rules on permitted development for householders, what these mean and how they should be applied in particular sets of circumstances'.

11. This being so, it has value as a tool for ensuring consistency in decision-making and, as such, I find it more pertinent to my decision than the diverse conclusions of individual Inspectors. As the guidance applies to the particular facts of this case, clearly covers the issue at hand and its explanation thereof has not been overturned by the Courts, I find no good reason to depart from it. At this point in time, it presents the most coherent means of applying the provisions of this part of the GPDO and, indeed, it adheres strictly to the letter of the law in relation to this particular matter.
12. I conclude on the balance of probabilities that the proposal fails to comply with limitation A.1(h)(iii) of Class A of Part 1 of Schedule 2 to the GPDO. Accordingly, the erection of the subject extension would not have been lawful at the time of the application.

### **The outbuilding**

13. That element of the appeal proposal described by the Appellant as 'an ancillary building in the residential curtilage of Millfield House' (hereinafter referred to as 'the outbuilding') takes the form of three linked blocks and an open car port with a footprint of approximate maximum dimensions of 22.4 metres by 15.65 metres. In addition to the car port, the facilities thus provided would include a gymnasium, an equipment and storage room, a games/cinema room, a music room, a home office and two wc/shower rooms. The outbuilding would be positioned within the curtilage of the dwellinghouse, on land to the east, and at a considerably lower level than, the house itself and at a minimum distance from the dwelling as existing of about 7 metres.
14. The Appellant contends that the erection of this building would, at the time of the application, have benefitted from deemed planning permission pursuant to Article 3 of the GPDO by reason of constituting permitted development, and would therefore have been lawful, relying in this regard on the provisions of Class E of Part 1 of Schedule 2. This defines as permitted development the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
15. It is common ground between the parties that the building would be located within the curtilage of the dwellinghouse and would comply with all the size and locational limitations to which Class E is subject. I concur. However, the Appellant and the Council disagree as to whether or not the building is required for a purpose incidental to the enjoyment of the dwellinghouse as such. If it is not, then it would be excluded from Class E and its erection would require express planning permission. Nothing before me suggests that the erection of the outbuilding need, in itself, result in the creation of a separate planning unit. However, this is not in itself determinative of compliance with Class E.

16. Case law arising from the judgment in *Emin v SSE & Mid Sussex DC* [1989] JPL 909 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’.
17. It was held that the physical size of the building in comparison to the dwellinghouse 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 proposed building was genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. The phrase ‘incidental to the enjoyment of the dwellinghouse as such’ should not be interpreted on the unrestrained whim of the householder but, rather, connotes some sense of reasonableness in the circumstances of the particular case.
18. These principles were reiterated in *LB Croydon v Gladden* [1994] 1 PLR 2 and *Holding v FSS & Thurrock BC* [2004] JPL 1405. The term ‘required’ is therefore interpreted for the purposes of applying Class E as meaning ‘reasonably required’. Other judgments clarify that in each case it has to remain a matter of fact and degree as to whether facilities were, or were not, an integral part of the ordinary residential use of the primary unit (*Peche D’or Investments v SSE* [1996] JPL 311) and that the facilities could not be something for the provision of a primary dwellinghouse purpose (*Rambridge v SSE & East Herts DC* [1996] QBD).
19. I am satisfied that, in principle, facilities of the kind proposed may sometimes be required for incidental purposes. All are facilities that residential occupiers might aspire to in seeking to improve their quality of life and none could be regarded as being for the provision of a primary dwellinghouse purpose. It is also feasible that, having regard to *Wallington v SSW* [1991] 1 PLR 87 and associated case law, the proposed facilities would not exceed what might reasonably be required by a single household occupying a large property.
20. I do not give significant weight to the Council’s concern that the granting of a LDC for this building could be used as an argument in seeking planning permission for the provision of an additional dwelling on the site. Even if this might be so, such considerations have no bearing on the lawfulness of proposed development. Nor do I find it significant that the outbuilding would adhere to a high standard of sustainable construction. Nonetheless, I consider it pertinent that, as a matter of fact and degree, there is a marked disparity between the floorspace of the envisaged outbuilding, the extent of the proposed facilities and the size of the existing dwellinghouse.
21. I acknowledge that, having regard to *Emin*, floorspace in excess of the existing dwelling does not in itself preclude the lawfulness of an outbuilding. Nonetheless, I am mindful that Millfield House is, at present, a property of limited size, suitable only for occupation by a small family and that, if the car port is excluded and the Appellant’s calculations of internal floorspace are accepted, the proposed outbuilding would essentially treble the accommodation currently available. The inclusion of the proposed extension in calculating the

- proportionate increase is not appropriate, as this did not exist on site at the time of the LDC application. I therefore find that, whilst physical size is not itself conclusive, it is nonetheless an important determinative in this case.
22. Many households would welcome facilities of the kind proposed within their homes and the Appellant has set out in some detail the use that she and her family would intend to make of them. However, in my assessment, this account reads predominantly as a rationalisation of desire rather than need, with an inclination towards personal whim which is frowned on by the Courts. It has not been demonstrated that space for a piano, a large home office, a substantial gymnasium and a games/cinema room, whilst nice to have, are *reasonably* required on such a large scale in relation to such a small property. Indeed, the size of the proposal is such that, with a redistribution of accommodation, which need not in itself require planning permission, the existing dwelling could easily become incidental to the outbuilding rather than *vice versa*.
23. It does not necessarily follow that the appeal proposal should be regarded as lawful because separate LDCs have been granted in the past for smaller, individual buildings that, cumulatively, might provide additional facilities of similar extent. Any LDC application must be assessed individually on the basis of the site circumstances that applied at the time of that application and any lawfulness thus confirmed does not transcend any subsequent material change in the matters relevant to that determination. Implementation of development pursuant to one LDC could well constitute a material change in the matters relevant to the determination of another. Accordingly, the fact that individual LDCs exist does not mean that all the development thus endorsed can be concurrently and lawfully implemented.
24. Although the Appellant refers to other appeal decisions which, in her perception, relate to similar developments, I do not know the full circumstances of those particular cases. I therefore conclude on the balance of probabilities that the intended outbuilding and the facilities within it would be of such a scale in comparison with the existing dwellinghouse that the proposal does not fall within the parameters of Class E of Part 1 of Schedule 2 to the GPDO. Accordingly, it would not have been lawful at the time of the LDC application.

### **Conclusion**

25. For the reasons given above I conclude that the Council's refusal to grant a LDC in respect of the extension and 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.

### **Formal decision**

26. The appeal is dismissed.

*Alan Woolnough*

INSPECTOR