The Planning Inspectorate

Appeal Decision

Site visit made on 29 October 2013

by Mr Keri Williams BA MA MRTPI

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

Decision date: 13 November 2013

Appeal Ref: APP/K0235/X/13/2191238
33 Kimbolton Road, Bedford, Bedfordshire, MK40 2 PB

- 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 Lousada Taylor Holdings Limited against the decision of Bedford Borough Council.
- The application Ref.12/01967/LDP, dated 1 October 2012, was refused by notice dated 10 December 2012.
- 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 proposed erection of an outbuilding, associated hardstanding and gates.

Summary of Decision: The appeal succeeds only to a limited extent. An LDC is issued for the proposed hardstanding and gates.

Background

1. Number 33 Kimbolton Road is a two-storey detached house on a substantial plot within the built-up area of Bedford. An LDC for proposed development is sought for the erection of an outbuilding and for hardstanding and gates. Drawing 02 shows the site as including no.33 and its plot. The single storey outbuilding would be sited to the rear of the house. Drawing 03 shows the proposed internal layout, which would include a multi-function games room/hobby space, a garden store, utility room, toilet, lobby, single garage and double car port. The building would extend to 23 metres in length. It would be 5 metres wide for the most part, extending to 9.55 metres where the garden store projects forward. There would be an area of hardstanding to the front, side and rear of the building. A further area of hardstanding to the front of the house would have a porous surface. One set of gates would be sited to the side of the existing house and the other two would be to the sides of the proposed building. The gates would not exceed 2 metres in height.

2. Planning merits are not relevant in this appeal. They are not an issue for me to consider in the context of an appeal under section 195 of the Act, which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case, relevant planning law and guidance and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.

Main issue

3. The main issue is whether the Council's decision not to issue an LDC was well-founded.

Reasons

4. Amongst other things, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order, 1995, as amended (GPDO) sets out that the provision within the curtilage of a dwellinghouse of *"any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such"* is permitted development. Class F sets out that the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is also permitted development. It is consistent with paragraph F1 of Class F that hardstanding to the front of the house would be of a porous material. Under Part 2, Class A of the GPDO the erection of a gate is permitted development unless its height would exceed 2 metres above ground level, or 1 metre if it would be adjacent to a highway used by vehicular traffic.

5. The Technical Guidance document *"Permitted Development for Householders"*, (DCLG, January 2013) explains that, under Class E, buildings should not be attached to the house and should be built for purposes incidental to the enjoyment of the house. It sets out that a purpose incidental to a dwelling house would not cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.

6. The principal element of the proposal is the outbuilding. It is not disputed that it would be within the curtilage of no.33. What is at issue is whether it would be a building required for a purpose incidental to the enjoyment of the dwellinghouse as such. In that context the Council draws my attention to *Emin v Secretary of State for the Environment, QBD, 1989, 58 P&CR.* In *Emin* there were two schemes for buildings in the curtilage of a dwellinghouse. The first was to accommodate a pottery, utility room, and garden/games room. The second was to accommodate archery, billiards and pottery.

7. A number of relevant considerations arise from *Emin.* In that judgement Sir Graham Eyre QC refers to the need to address *"the nature of the activities to be carried on in the proposed building to ensure they are incidental or conducive to the very condition of living in the dwelling-house."* He says that the scale of those activities is an important matter and that *"In that context the physical sizes of buildings could be a relevant consideration in that they might represent some indicia as to the nature and scale of the activities."* "*When a matter is looked at as a whole, size may be an important consideration but not by itself conclusive."* He also refers to the need for a sense of reasonableness in all the circumstances of a case. Whether a building is required for a purpose associated with the enjoyment of a dwellinghouse *"cannot rely on the unrestrained whim of he who dwells there"*. It was also held that the word incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. He refers to the need to consider whether, in the context of the planning unit, *"the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse."*

8. The principal elements in the proposed building would be the games room/hobby space, garden store, garage and car port. These would accommodate activities which, in principle, are capable of being considered incidental to the enjoyment of a dwellinghouse. Utility rooms are commonly found within dwellings. Nevertheless, they provide for activities supportive of the running of a dwelling rather than providing primary living accommodation. In that context I consider that a utility room is also capable, in principle, of being considered incidental to the enjoyment of a dwellinghouse.

9. It is consistent with *Emin* that consideration of whether a proposed building is genuinely required for an incidental purpose depends, in part, on the circumstances of a particular dwellinghouse and its occupiers. In this case, while the proposal cannot be said to rely on the whim of the occupier, it has not been demonstrated that the uses and activities which the building would accommodate genuinely reflect the reasonable needs of the existing or prospective occupiers of no.33 or are required to further their enjoyment of that dwellinghouse. Rather, the proposal appears contrived to demonstrate the type and size of building which the appellants perceive would be consistent with the GPDO requirements, including the constraints on development under Class E.

10. The appellant refers to limitations on space within no.33 and the absence of, for example, ancillary storage space and a utility room. However, it is not a particularly small dwelling. Nor has it been shown that its layout places any particular constraints on the use of its internal space. The proposed building would occupy a substantial proportion of the rear garden of no.33. Its floorspace, of about 168 m², would exceed that of no.33 by almost 20 m². It is consistent with *Emin* that the building's size is not decisive. However, it is a material consideration which weighs against the appellants. It is indicative that the uses of the proposed building are unlikely to be ancillary or subordinate to the main use of the building as a dwellinghouse.

11. This is also reflected in the size of some of the principal elements of the building. In particular, the multi-function games/hobby room would be very large, at 5.4 m by 8.4 m. While the appellant refers to the space needs for a combination of particular activities, including snooker, table tennis and gym equipment, it has not been shown that these activities, whether individually or in combination, are reasonably and genuinely required for the enjoyment of no.33 as a dwellinghouse by its current occupiers or by prospective occupiers. Similarly, the garden store is substantial in size, with a floor area of 5.3 metres by 4.2 metres. Although no.33 has a substantial plot, the proposed building and hardstanding would significantly reduce the garden area requiring maintenance. I appreciate that, in addition to gardening equipment, there could be a need to store, for example, play equipment. Nevertheless, it has not been shown that a garden store of this size is reasonably required for purposes incidental to the enjoyment of no.33 as a dwellinghouse.

12. The appellant also illustrates, on drawing 04, the comparative size of a medium sized, off the shelf, swimming pool and a related plant room. While Part 1 Class E encompasses the provision of a swimming pool within the curtilage of a dwellinghouse, it is not part of this proposal and would be subject to the same considerations with regard to whether it was reasonably required for a purpose incidental to the enjoyment of this dwellinghouse. Reference is also made to a decision made by St Albans Council, Ref.5/06/1653CP, to grant an LDC for a

single storey detached outbuilding at The Cottage, Bucknalls Green, Garston. The appellant observes that, in that case, the floorspace of the proposed building would exceed that of the dwelling. I am not familiar with the full circumstances of that decision or of the evidence which supported the application. These matters do not outweigh my conclusions, which rest on the particular circumstances of this case.

Conclusion

13. I conclude that, with regard to the proposed building, the appellant has not met the burden of proof to show, on the balance of probabilities, that it is required for a purpose incidental to the enjoyment of no.33 as a dwellinghouse. It would not be permitted development and the Council's decision not to issue an LDC for it was well-founded. The Council does not dispute that the proposed hardstanding and gates would amount to permitted development and I see no reason to take a different view. The Council's decision not to issue an LDC in respect of those elements of the proposal was not well-founded. The appeal should succeed in respect of those elements. Accordingly, I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

14. I dismiss the appeal in respect of the proposed building. I allow the appeal in respect of the proposed hardstanding and gates. I attach to this decision a Lawful Development Certificate describing the operations which I consider to be lawful.

K Williams

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 1 October 2012 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined 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 hardstanding and gates would be permitted development under the Town and Country Planning (General Permitted Development) Order, 1995, as amended.

Signed

K Williams
INSPECTOR

Date 13.11.2013
Reference: APP/K0235/X/13/2191238.

First Schedule
The provision of the areas of hardstanding shown hatched black on the attached plan and the erection of the three gates shown on that plan.

Second Schedule

Land at 33 Kimbolton Road, Bedford, Bedfordshire, MK40 2PB.

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 to enforcement action, under section 172 of the 1990 Act, on that date.

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: 13.11.2013

by Mr Keri Williams BA MA MRTPI

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