
Appeal Decision

Site visit made on 26 November 2013

by Mr Keri Williams BA MA MRTPI

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

Decision date: 19 December 2013

Appeal Ref: APP/P1940/X/12/2188122

**Coniston, White Shack Lane, Chandlers Cross, Rickmansworth,
Hertfordshire, WD3 4ND**

- 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 M Flesch against the decision of Three Rivers District Council.
- The application Ref.12/1462/CLPD, dated 1 August 2012, was refused by notice dated 3 October 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 construction of an ancillary outbuilding housing a gym and shower room, office and games room.

Summary of Decision: The appeal is dismissed and an LDC is not granted.

Background

1. 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 judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. Coniston is a detached bungalow within an extensive plot on the south side of White Shack Lane. An LDC is sought for a proposed detached building in the bungalow's rear garden. Drawings 10974-P001 and 10974-P002-A show the proposal. The single-storey building would be sited 2 m from the plot's eastern boundary and about 43 m from the rear of the dwelling.

Main Issue

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

Reasons

3. Amongst other things, Class E, Part 1 of Schedule 2 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.. required for a purpose incidental to the enjoyment of the dwellinghouse as such*" is permitted development. It is not disputed that the

proposed building would be within the curtilage of Coniston and would not infringe the requirements set out in GPDO paragraphs E1 and E2 of Class E. The Technical Guidance document "*Permitted Development for Householders*", (DCLG, January 2013) explains that a purpose incidental to a dwelling house would not cover separate, self-contained accommodation or an outbuilding providing primary living accommodation such as a bedroom, bathroom or kitchen.

4. In *Emin v Secretary of State for the Environment and Mid-Sussex County Council, QBD, 1989, 58 P&CR* 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 for archery, billiards and pottery. In the 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 dwellinghouse.*" 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.*" Whilst it is a matter primarily for the occupier to determine what incidental purposes he proposes to enjoy, an objective test of reasonableness should be applied having regard to the circumstances of a particular 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 term incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. Reference is made 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.*"
5. In this case, the building would be L-shaped and would have a footprint of about 195 m². In addition to a small entrance area it would contain a home office, games room, gym and shower room. Having regard to *Emin* I must consider whether, in the circumstances of this case, it has been shown that the proposed building is reasonably required for purposes incidental to the enjoyment of Coniston as a dwellinghouse.
6. A home office, games room and gym are uses which are not usually part of primary living accommodation. They are capable, in principle, of being incidental to the enjoyment of a dwellinghouse. A shower room, on the other hand, can be regarded as primary living accommodation. However, in this case it would be an ancillary facility to the gym and games room and its provision would not be unreasonable. Nor do I consider that the extent of separation of the proposed building from Coniston or its orientation would prevent the requirements of Class E being met.
7. The proposed gym and games room, whether considered individually or together, would provide very spacious accommodation, with a combined floorspace of about 116 m². It has not been shown that as many as 4 pieces of gym equipment and the provision of extensive additional space within the gym, including space for seating, are reasonably required. The games room layout shows snooker and table tennis tables. I appreciate that space is required around these items of equipment. However, a significant amount of additional

space would also be provided, again shown as occupied by seating. The home office is also of generous proportions, with a significant amount of space in addition to that required for a desk and office equipment. It seems to me that these uses could reasonably be accommodated in rooms of more modest proportions.

8. It is consistent with Emin that size is not in itself decisive but is a material consideration. The outbuilding's footprint, which reflects the spacious internal accommodation, would exceed that of Coniston by about 62 m². I consider that to be a substantial amount. I appreciate that Coniston has additional floorspace a first floor level. Nevertheless, the size of the proposed building is an indicator that its uses are unlikely to be ancillary or subordinate to the main use of the building as a dwellinghouse. This weighs against the appellants. As I set out above, there are four existing outbuildings within the curtilage of Coniston. The appellant has not demonstrated why one of those buildings could not reasonably be adapted for use, for example, as a home office.
9. The appellant cites other appeal decisions. At Eight Acre, Harpenden (APP/B1930/X/07/2061614) the Inspector allowed an appeal and granted an LDC for an outbuilding to contain a swimming pool, a room for snooker, gym and play, together with a barbeque area. The building's footprint, of 397 m², would be more than 4 times larger than the host dwelling. The Inspector took into account that the proposed uses were typical, everyday recreational pursuits. He considered that the building would not be disproportionate to what was required to house the proposed uses. In another case, at Hyde Lane (APP/P1940/X/12/2176006) the Inspector allowed an LDC appeal concerning an outbuilding which would contain a swimming pool, plant room, changing rooms, snooker room, bar and children's activity area. It would be twice the size of the host building.
10. These appeal decisions do not direct my own conclusions. I take them into account but they rely on their own particular circumstances and the evidence before the Inspectors. Indeed, the Council also refers to several other cases in which Inspectors dismissed appeals and took into account the scale of the proposed uses and buildings in considering whether they were reasonably required for purposes incidental to the enjoyment of the relevant dwellinghouses.

Conclusion

11. Having regard to the above and to all other matters raised I find that it has not been shown, on the balance of probabilities, that the proposed building is reasonably required for purposes incidental to the enjoyment of Coniston as a dwellinghouse. It would not be permitted development falling within Class E. I therefore conclude that the Council's decision to refuse to issue an LDC was well-founded and the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

12. I dismiss the appeal.

K Williams

INSPECTOR