The Planning Inspectorate

Appeal Decision

Site visit made on 18 May 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 July 2021

Appeal Ref: APP/R4408/X/20/3263972
Gransden House, Church Street, Royston, Barnsley S71 4QZ

- 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 Wilfred Moston against the decision of Barnsley Metropolitan Borough Council.
- The application Ref 2020/0708, dated 2 July 2020, was refused by notice dated 1 September 2020.
- 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 described as a garden building at the rear gardens of Gransden House.

Decision: the appeal is dismissed

Procedural matters

1. The development for which a certificate of lawful use or development is sought is described on the Application Form as a garden building at the rear gardens of Gransden House. The Council has changed that description to the erection of a detached outbuilding in the formal Decision Notice. I consider that the description as altered by the Council more accurately describes the development proposed, and I will adopt that description for the purpose of my Decision.

2. The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act) for a proposed development. I noted at my site visit that the foundations for the proposed detached outbuilding have already been dug. I noted that the position, dimensions and layout of the foundations corresponded to those shown on Drawing No. DWG 001 Rev C submitted with the application for the LDC. I therefore consider that, as a matter of fact and degree, a material start has been made on that development for the purposes of section 56 of the Town and Country Planning Act 1990 (the 1990 Act).

3. This raises the spectre that the LDC should have been submitted under section 191(1)(b) of the 1990 Act in relation to an existing development. The appellant has subsequently confirmed that the foundations were dug over a period of three days starting on 11 July 2019. It follows that the material start on the detached outbuilding was made before the date on which the application for the LDC now subject to this appeal was submitted. I therefore consider that this appeal should properly be considered as being against the refusal of

an application for a certificate of lawful use or development in relation to an existing development under section 191(1)(b) of the 1990 Act. This is purely a procedural matter that has no bearing on my consideration of the cases made by either party.

Reasons

4. Section 191(4) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them of the lawfulness at the time of the application of the use, operation or other matter described in the application, or that description as modified by the local planning authority or a description substituted by them, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

5. The Council sets three substantive reasons in the formal Decision Notice as to why the development is considered not be lawful. These may be summarised as:

- the outbuilding is not be incidental to the main dwellinghouse
- the development is within the curtilage of a listed building
- there insufficient evidence to justify the size and use of the building

6. I will consider the first two of those reasons below. However, in my view there is sufficient evidence contained within the application forms and the accompanying plans to determine this appeal. That information is further supplemented by the evidence submitted with this appeal.

Whether the outbuilding is incidental to the main dwellinghouse

7. 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 by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed outbuilding complies with the limitations at Classes E.1, E.2 and E.3, and I see no reason to take a different view.

8. The area of dispute is whether the detached outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse as such. In that context, it is settled case law that the keynote is reasonableness[1]. Case law establishes that what is abnormal is not necessarily unreasonable, but also that what could be regarded as incidental does not depend on the unrestrained whim of the occupier.

[1] *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

9. In this case, the detached outbuilding is divided into four distinct rooms. The largest of these rooms is annotated on the submitted plans (Drawing No: DWG-001 Rev C) as being part gym area and part sitting area. I accept entirely that, in principle, a gymnasium could be regarded as being incidental to the enjoyment of the dwellinghouse as such. However, I am not persuaded that the same can be said of the sitting area.

10. The Courts have held that the test in this respect is one of fact and degree[2]. The sitting area within the detached outbuilding would, to adopt the language of Macleoad QC in *Peche D'Or Investments,* not be expected to be regarded as being incidental to the enjoyment of a dwelling house as such because it is generally an integral part of the ordinary residential use as a dwelling house.

11. As part of my site visit, I was able to view the ground floor accommodation within the host property. I noted that this accommodation included, amongst other facilities, a well-appointed living/dining room, including a sofa and a separate armchair. There is also a conservatory within which is a further sitting area containing more sofas.

12. It follows that the sitting area with the detached outbuilding would duplicate facilities already provided by the host property. Furthermore, the detached outbuilding is located in relatively close proximity to that host property. For these reasons, I consider that as a matter of fact and degree the sitting area shown on Drawing No: DWG-001 Rev C cannot be regarded as being incidental to the enjoyment of the dwellinghouse as such.

13. I have carefully considered whether the sitting area within the detached outbuilding should more properly be regarded as being directly associated with the use of the adjoining gym area rather than sitting area in its own right. However, they are annotated on Drawing No: DWG-001 Rev C as being separate areas which to my mind connotes different purposes. I have therefore treated them as such.

14. I am satisfied that the wetroom shown on Drawing No: DWG-001 Rev C can, as a matter of fact and degree, be regarded as being reasonably required for use in connection with the gymnasium. I also have no concerns regarding the storage area.

15. The fourth room is annotated on Drawing No: DWG-001 Rev C as being a workroom/studio. I equate this to a study which, in *Peche D'Or Investments,* was held could normally be regarded being an integral part of a dwellinghouse. I noted during my site visit that there was not a dedicated study in the host property. However, it seems to me that there is sufficient space within the host property for the appellant to provide a study area, of a size commensurate with a private dwelling, should he wish to do so. Consequently, I consider that as a matter of fact and degree the workroom/studio shown on Drawing No: DWG-001 Rev C also cannot be regarded as being incidental to the enjoyment of the dwellinghouse as such.

16. Furthermore, even if the workroom/studio could be regarded as being incidental to the enjoyment of the dwellinghouse as such in terms of its intended use, I have concerns over the size of that space. It is settled case law that the size of the building is not, in itself, determinative of whether a

[2] *Peche D'Or Investments v Secretary of State for the Environment and another* [1996] JPL 311

development falls within the provision of Class E3[4]. However, the workroom/studio shown on Drawing No: DWG-001 Rev C is annotated as having a floor area just under 18m². In my view, that is a generous size for a study/workroom/studio in the context of a private dwelling. No justification has been provided as to why a study/workroom/studio of that size is required. In the absence of that justification, and as a matter of fact and degree, I do not consider that the floor area of the study/workroom/studio as shown on Drawing No: DWG-001 Rev C can properly be regarded as being reasonably required for purposes incidental to the dwellinghouse as such or sensibly related to the enjoyment of that dwellinghouse.

Whether the development is within the curtilage of a listed building

17. The appeal property is a semi-detached property standing within a substantial garden with well-established boundaries. Immediately to the south of the application site is another residential property, known as The Vicarage, also within its own enclosed and well-defined curtilage. To the south of The Vicarage is the Church of St John the Baptist, a Grade I listed building. The church sits within its own grounds, delineated by stone walls.

18. In *Attorney-General ex rel Sutcliffe v Calderdale Borough Council* [1983] JPL 310 the Court of Appeal held that the factors most relevant in deciding whether a structure was within the curtilage of a listed building were:

    - the physical layout of the listed building and the structure
    - ownership, past and present; and
    - use or function, past and present.

19. Applying those principles to this case, the historical maps provided by the Council show that the appeal property was formerly The Vicarage associated with the Church of St John the Baptist. The 1854 map shows an intervening building or structure, the purposes of which is unknown but which appears to be enclosed by a boundary of some description. By 1948 that building is no longer shown but the plan of that date does depict a footpath leading from the church to a building identified as The Vicarage, but what is now the appeal property. The description of the appeal property as The Vicarage and the presence of a footpath leading directly to it from the church suggest a functional link between the two buildings. I note that both the 1854 and 1948 maps show what appears to be a boundary of some description between the church and The Vicarage, through which the footpath crosses (presumably through a gap or gate of some description).

20. The situation on the date the application for the LDC was made was somewhat different. In the intervening period, a new dwelling (now itself known as The Vicarage) has been constructed to the south of the appeal property. The new The Vicarage is contained within a well-defined boundary. The appeal property is now separated from the Grade I listed building and its grounds by the rear garden to The Vicarage and therefore by an intervening residential curtilage.

21. Moreover, the building identified on the 1854 and 1948 maps as The Vicarage has been subdivided into two residential properties, one being the appeal

[4] *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

property. The latter sits within its own plot and is occupied as a single unit of occupation that is entirely separate from its attached neighbour. On the evidence before me, neither of those dwellings has a functional relationship with the listed building. In that context, I note that the path shown on the 1948 map as leading from the church to what was then shown as The Vicarage now skirts the boundary with the appeal property but does not pass through it.

22. The plot within which the appeal property sits is well defined by the boundary treatments. As such, the appeal property itself therefore has a clearly identifiable curtilage. It is settled case law that no piece of land can ever be within the curtilage of more than one building [5].

23. There is no reference of The Vicarage, as identified on the 1854 and 1948 maps, in the official listing description for the Church of St John the Baptist. Indeed, The Vicarage (i.e. the appeal property) is not shown on the map included in that listing description, whereas dwelling now called The Vicarage does feature on that plan. It follows that there is no indication of a functional relationship between the appeal property and the Church of St John the Baptist in the official listing description. Whilst this is not in any way determinative in itself, it does tend to suggest that there was no direct functional link at the time Church of St John the Baptist was added to the statutory list.

24. The appellants indicate that they are the owners of the appeal property. I recognise that it is likely that the appeal property was at one time in the ownership of the church, albeit I have no evidence before me to suggest was at the time that St John the Baptist's church was listed[6].

25. The appeal property is in independent residential use. I recognise that it is likely that the appeal property was, when known as The Vicarage, occupied residentially in connection with the Church of St John the Baptist. But that is no longer case, with the fact that is no longer known as The Vicarage alluding to that.

26. To summarise, the appeal property is a privately owned dwelling that has a clearly identifiable curtilage of its own. It has no functional link with the listed building and is physically separated from it by an intervening residential property. I consider it likely that the appeal property was within the curtilage of the Church of St John the Baptist at some point in the past. However, for the reasons stated above, I consider that this is no longer the case and that the appeal property was not within the curtilage of a listed building on the date that the application for the LDC was made.

Conclusion

27. Although I have found that the detached outbuilding is not within the curtilage of a listed building, that does not alter my conclusion that the detached outbuilding cannot properly be regarded as being reasonably required for purposes incidental to the dwellinghouse as such. Consequently, for the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a detached outbuilding at Gransden House, Church Street, Royston, Barnsley S71 4QZ was well-founded and that

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[5] *Skerritts of Nottingham Ltd v Secretary of State for the Environment, Transport and the Regions and another* [2000] EWCA Civ 60

[6] Stated on the listing description as 13 October 1986.

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

The appeal is dismissed

Paul Freer

INSPECTOR