The Planning Inspectorate

Appeal Decision

Hearing held on 23 August 2011

Site visit made on 23 August 2011

by Wendy McKay LLB

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

Decision date: 7 October 2011

Appeal Ref: APP/G3110/X/10/2143003
51 Green Road, Headington, Oxford, OX3 8LD

- 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 V Vasilveva against the decision of Oxford City Council.
- The application Ref 10/02830/CPU, dated 20 October 2010, was refused by notice dated 13 December 2010.
- 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 an outbuilding.

Summary of Decision: The appeal is dismissed.

Application for costs

1. At the Hearing an application for costs was made by Mrs V Vasileva against Oxford City Council. This application will be the subject of a separate Decision.

Procedural Matters

2. Circular 10/97: Enforcing Planning Control explains that neither the identity of the applicant nor the planning merits of the operation, use or activity, are relevant to the purely legal issues which are involved in determining a lawful development certificate application (LDC). I have determined this appeal on that basis.

3. There is no implied power to modify the description of the proposed development in a s.192 application, and I have dealt with this case on that basis.

Main Issue

4. The main issue is whether the proposed development would constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development Order) 1995 as amended[1] (GPDO).

[1] See The Town and Country Planning (General Permitted Development (Amendment) (No. 2) (England) Order 2008

Reasons

5. The appeal property comprises a two-storey dwelling house. On the ground floor, there is a kitchen, a living room that is open plan with a dining room that is presently being used largely as an office and a conservatory that also is used, in part, as an office. On the first floor, there is one bedroom for the appellant and her husband and a second bedroom for their son. There is a third guest bedroom in the loft space. There is a detached single garage at the rear and a garden about 26m by 7m. The appellant proposes to construct a detached outbuilding in the rear garden.

6. The GPDO, Schedule 2, Part 1, Class E sets out permitted development rights for the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.

7. The Council accepts that the proposed outbuilding would comply with all the limitations set out in Class E.1 and that it would be built entirely within the curtilage of the property. However, the Council does not agree that there is a reasonable requirement for the scale of facilities shown within the proposed outbuilding such that its use would be for "*a purpose incidental to the enjoyment of the dwellinghouse as such*".

8. The new structure would have a footprint of some $86m^2$ and together with the retained garage the outbuildings would have a footprint of about $100m^2$. This compares to the footprint of the original dwellinghouse which is some $63m^2$. The submitted plan indicates that the internal layout of the proposed structure would be sub-divided to provide a separate store and workspace within the wider rear section with the gym area, ping-pong table and sitting area being accommodated within the narrow central section.

9. The burden of proof in this appeal rests upon the appellant and the appropriate test is on the "*balance of probabilities*". The size of the outbuilding compared to the original dwelling, and the scale and nature of use are all material factors in determining whether the purpose of the building is intended to be incidental. Whilst the footprint of the structure would be materially greater than that of the original dwelling it must be borne in mind that what is proposed is a single storey building, as compared to the original two-storey dwelling. The appellant has provided details as to why additional space is needed.

10. The letter dated 20 October 2010 which accompanied the LDC application provided additional details as to the nature of the required purposes. This explains that much of the central area would be used as a gym, and a ping-pong table would also be folded out. The applicant's husband wishes to have an office and this is the same as the previously identified "*working space*". There would also be a room for a sitting area and general leisure space to relax in when not exercising or using the office. The appellant submits that there is nothing to suggest that the size of the structure would be beyond what would be reasonably required for enjoyment incidental to the use of the dwellinghouse as such.

11. However, in order to comprise permitted development, all of the proposed building must be so required. A building that has a mixed use, partly incidental and partly not, does not fall within Class E. This means that the building cannot, itself, be a dwellinghouse, nor can it be something for the provision of

a primary dwellinghouse purpose (*Rambridge v Secretary for State for the Environment and East Herts DC QBD November 22, 1996*).

12. The appellant refers to the case of *Peche D'or Investments v Secretary of State for the Environment [1996] JPL 311*. In that case, whilst it was acknowledged that a study room would normally be regarded as an integral part of the ordinary residential use as a dwellinghouse, in each case, it had to remain a matter of fact and degree as to whether that was, or was not, the case. There was no warrant in the legislation for exclusion of a particular specified type of room or building, as a matter of law. The dictum of Mr Nigel Macleod QC in the *Peche D'or Investments* case was adopted by Mr Malcolm Spence QC in the subsequent *Rambridge* case.

13. The appellant's appeal statement described the "*relaxing area*" as an area for her to be close to her family whilst they go about their enjoyment of the areas provided in the outbuilding, including a home cinema and a space for growing indoor plants.

14. At the Hearing, the appellant claimed that the term "*sitting area*" as shown on the application drawing was not a technical expression and should not be regarded as a mere duplication of the function of a lounge. It would have the purpose of providing a sitting/relaxation space within the development that would enable the appellant to be with her family whilst they used the facility as it was a separate building and not an extension of the dwelling.

15. The appellant expanded upon this by stating that the main reason for the sitting area was that there was not enough room in the existing living room to accommodate her flower growing hobby and a home cinema. At the Hearing, the appellant's neighbour, Sandra Bodel, indicated that she had a home cinema in her own sitting room. It would seem that, by definition, a '*home cinema*' is something that could reasonably be expected to be accommodated within the home. The appellant is not proposing any form of custom-built screening room and a home-entertainment set-up of the type proposed is not normally something that would require to be accommodated separately from the main living area of a dwelling.

16. The Council pointed out that the property has a conservatory that could normally be expected to house any plants. The appellant explained that she is self-employed working as both a personal care assistant and as an accountant/book keeper. She presently uses the conservatory as a dining room, as her office is in the real dining room. Her husband also has a desk and a computer within the conservatory where he undertakes paperwork for his business. The living room provides a normal living area with chairs, sofa and coffee table and it also presently accommodates the flowers.

17. The appellant clearly find the existing dwelling too small and seeks more space to accommodate her family's various needs. Although, at present, there are two spaces used as an office/study within the existing dwelling, these fall within areas that were originally designed to serve a different function and, on that basis, it would seem that there is no duplication in terms of the office space.

18. However, the proposed function of the "*sitting area*" would not be materially different to the lounge within the main dwelling and neither the desire to accommodate flowers, nor the home cinema proposal, dissuades me from this

view. The creation of a "*sitting area*" within the new building merely replicates the use of the existing accommodation in the main dwelling and extends the primary use into the new structure. I find, as a matter of fact and degree, that the building has, in part, been designed to be used for primary residential activities. Whilst certain of the proposed activities could be regarded as incidental, I am satisfied that the building as a whole would not be required for incidental purposes. It would not therefore fall within the scope of Class E permitted development.

19. Turning now to other elements of the proposed use of the building, the Council's position is that the appellant has put forward an outbuilding close to the maximum size permitted by the limitations and then uses have been contrived to fit that space which is not genuinely required.

20. In the case of *Emin v SSE [1989] JPL 909* the Court confirmed that regard should be had to the use to which it was proposed to put a building and to consider the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. 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 buildings were genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

21. At the Hearing, the size of the proposed gym equipment was clarified as the dimensions provided in the appellant's statement were clearly incorrect. It was confirmed that the three items specified were 1.21m x 0.73m, 2.04m x 0.82m and 1.62m x 1.32m. The appellant has not sub-divided the area within which the items are to be accommodated and could not specify the amount of space that the equipment would be likely to occupy. The Council calculates that five standard size gym items could be accommodated within a layout of some 5m x 3.5m with the ping-pong table needing about 5.5 x 3m.

22. The appellant is clearly not required to specify how it is proposed to use every inch of space. Since the scheme proposes a multiplicity of uses within the open-plan narrow central section, I recognise that an element of flexibility between various activities could reasonably be anticipated. Nevertheless, the question of whether the building is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse must retain an element of objective reasonableness. On the particular facts of this case, the space intended to contain the incidental uses within the narrow central section does seem far bigger than necessary for that purpose. I am unable to conclude that the structure is genuinely and reasonably required to accommodate the proposed activities. I find, on the balance of probabilities, that the proposed outbuilding is not reasonably required or necessary for those purposes and it would not be on a scale that could objectively be regarded as being reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such.

23. I conclude that the outbuilding as a whole would not be required for incidental purposes. Furthermore, the size of the structure would be far greater than would reasonably be required to serve the specified incidental purposes. The proposed development would not, therefore, constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of GPDO.

Formal Conclusions

24. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of an 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

25. The appeal is dismissed.

Wendy McKay

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Jack Anderson of Counsel	Instructed under the direct access scheme
Mrs V Vasileva	Appellant

FOR THE LOCAL PLANNING AUTHORITY:

Mr Mark Spragg	Planning officer

INTERESTED PERSONS:

Sandra Bodel	Local resident
Daryll Woods	Local resident
Claire Major	Local resident
Philip Major	Local resident

DOCUMENTS SUBMITTED AT THE HEARING

1. Copy letter sent by the Council notifying local people of the hearing and circulation list
2. General Permitted Development Order Extract
3. Case report and transcript Emin v SSE and Mid-Sussex DC
4. Case report Wallington v SSE for Wales and another
5. Case transcript Holding v FSS
6. Case transcript Peche D’Or Investments v SSE and another