

MC/22/1099

Date Received: 3 May 2022
Location: 233 Hempstead Road Hempstead
Gillingham Medway
Proposal: Application for a Lawful Development Certificate (Existing) for mixed use of residential and commercial use and the erection of buildings for commercial use
Applicant: Mr Anthony Rogers
Ward: Hempstead And Wigmore Ward
Case Officer: Stephie Theedom
Contact Number: 01634 331700

Recommendation of Officers to the Planning Committee, to be considered and determined by the Planning Committee at a meeting to be held on 27th July 2022.

Recommendation - Refusal

- 1 The existing log cabin by reason of its design layout, size and arrangement providing a living room, kitchen, shower room and two bedrooms, in addition to the confirmed use of the log cabin by the applicant being for 'holiday let' purpose, does not constitute a use that is 'incidental' to the enjoyment of the dwelling house and as such fails the purpose of Class E, Part 1 schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The annexe as such does not constitute permitted development and lawful development certificate should be refused.

Recommendation

For the reasons for this recommendation for refusal of lawful development certificate please see the Appraisal Section and Conclusions at the end of this report.

Proposal

Application for a Lawful Development Certificate (Existing) for mixed use of residential and commercial use and the erection of buildings for commercial use.

The application seeks an existing lawful development certificate relating to a total of three outbuilding as detailed below.

Building A: located to the north of the side on the boundary of the neighbouring dwelling No.229. This building is used as a garden shed.

Building B: is a container type structure 'C' and connects to (building E) a log cabin located

central in the garden in close proximity to the eastern boundary.

Structure/Building D: is a free-standing pergola located in close proximity to the host dwelling (No.233).

Building E log cabin was approved under MC/18/1240 which was then extended by the addition of building B to create a bedroom (to the log cabin). The connecting lobby was also added and therefore enabling the building to be assessed as a single one building for the purpose of this application. This building is used as an annex with its use, as stated by the applicant being for holiday lets.

For the purpose of this report the building will be addressed as building B.

Relevant Planning History

MC/18/1240 Variation of condition 2 to allow a minor material amendment to planning permission MC/17/0679 to allow for the demolition of the bungalow and construction of a 3-bedroom dwelling with construction of orangery and alteration to garden layout to the rear of Plot B
Decision: Approved subject to conditions
Date: 3rd August 2018

MC/18/0285 Details pursuant to condition 10 of planning permission MC/17/0679 - Alterations to existing bungalow to include construction of side extensions, raising of roof height and insertion of rooflights to facilitate living accommodation in the roof space and detached double garage to front; construction of a detached two storey 4 bedroom dwelling to front of site with associated parking; formation of access road from front to rear of site - demolition of conservatory, garage and sheds.
Decision: discharged
Date: 2nd February 2018

MC/17/0679 Alterations to existing bungalow to include construction of side extensions, raising of roof height and insertion of rooflights to facilitate living accommodation in the roof space and detached double garage to front; construction of a detached two storey 4-bedroom dwelling to front of site with associated parking; formation of access road from front to rear of site - demolition of conservatory, garage and sheds.
Decision: Approved subject to conditions
Date: 14th July 2017

PRE/16/5152 Construction of side and rear extension to existing bungalow and double garage to the front. Construction of detached dwellinghouse to front of site and construction of access road from front to rear of site

Representations

This application is an LDC and as such no consultation is normally required. However, given the nature of the development in this instance a public consultation of the

neighbouring property was carried out.

Relevant Guidance

Section 191 Town and Country Planning Act 1990 (as amended by the 1991 Act) (the 1990 Act)

Considerations:

Section 191 (1) of the 1990 Act allows a person to make an application to determine whether a specified existing use, operation which has been carried out on land is lawful for planning purposes.

In a CLEUD application, the matters to be determined are solely matters of evidential fact and planning law. The planning merits are not relevant and therefore they are not an issue for the Council to consider.

Assessment

E.1 Development is not permitted by Class E if—

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P or Q of Part 3 of this Schedule (changes of use).

The dwelling house was not granted by virtue of class M, N P or Q of Part 3 of this Schedule

(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

Buildings A, B/C, D, E does not exceed 50% of the overall curtilage (cumulatively)

(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.

The buildings and structures are not situated forwards to of a principal elevation of the host dwelling

(d) the building would have more than a single storey.

Building A is single storey

(e) the height of the building, enclosure or container would exceed—

(i) 4 metres in the case of a building with a dual-pitched roof,

(ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or

(iii) 3 metres in any other case.

- (f) the height of the eaves of the building would exceed 2.5 metres.
- (g) the building, enclosure, pool or container would be situated within the curtilage of a listed building; Building A is not situated within the curtilage of a listed building
- (h) it would include the construction or provision of a veranda, balcony or raised platform.

None of the buildings/structures exceed this threshold and located within 2m of the boundary. None of the structures include the construction or provision of a veranda, balcony or raised platform

- (i) it relates to a dwelling or a microwave antenna; or
- (j) the capacity of the container would exceed 3,500 litres.

None of the buildings/structures exceed this threshold

E.2 In the case of any land within the curtilage of the dwellinghouse which is within—

- (a) an area of outstanding natural beauty.
- (b) the Broads.
- (c) a National Park; or
- (d) a World Heritage Site,

The site is not within a designated area

Development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

None of the buildings/structures exceed this threshold

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.

The site is not situated within article 2(3) land

In assessing developments under Class E, for the purpose of interpretation the legislation states:

E.4. For the purposes of Class E, “purpose incidental to the enjoyment of the dwellinghouse as such” includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse.

Whilst the shed (building A), structures such as the pergola can be classed as being

incidental for the enjoyment of the dwelling house. In accordance with the statement submitted by the applicant in support of the application and from information provided within the PCN (Planning Contravention Notice), it is confirmed that the log cabin (extended by attaching a container to enlarge it) has a design layout that provides a kitchen, shower room, 2 bedrooms and a living area. Based on this arrangement and facilities provided within the building, this indicates a layout of a separate planning unit. Which based on the above legislation interpretation falls outside a use classed as 'incidental to the dwelling'. In addition, the applicant has confirmed that the log cabin is sometimes used for 'holiday lets' and advertised as such. Consequently, it is considered that the development fails, and it is not considered to be permitted development by reason of the operation not falling within the interpretation as being 'incidental' to the dwelling.

Conclusions and Reasons for Refusal

The existing log cabin by reason of its design layout, size and arrangement providing a living room, kitchen, shower room and two bedrooms, in addition to the confirmed use of the log cabin by the applicant being for 'holiday let' purpose, does not constitute a use that is 'incidental' to the enjoyment of the dwelling house and as such fails the purpose of Class E, Part 1 schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 (as amended). The annexe as such does not constitute permitted development and lawful development certificate should be refused.

The application would normally be determined under delegated powers but is being referred to Members for determination due to the nature of the planning breach, its effect on the residential occupiers of the adjacent property, and the inability of the applicant to reach a compromise to address the breach.

Background Papers

The relevant background papers relating to the individual applications comprise: the applications and all supporting documentation submitted therewith; and items identified in any Relevant History and Representations section within the report.

Any information referred to is available for inspection on Medway Council's Website <https://publicaccess1.medway.gov.uk/online-applications/>