Expiry Date – 29.1.17

Development Control – Delegated Officer Report

Application Number: AWDM/1692/16 Recommendation – Refuse

Site: 30 Hillside, Southwick

Proposal: **Lawful Development Certificate for proposed rooflight and proposed Cabrio rooflight to south-east side elevation of existing detached garage.**

Neighbours checked: n/a

Additional neighbour notifications: n/a

Date of Site Visit: 25.1.17

Site and Surroundings

This application relates to a detached garden building in the north west corner of the rear of 30 Hillside, a detached extended bungalow on the north east side of Hillside at the top of the banjo head of the road. The original garages were extended with permission, see Relevant Planning History below.

The property is not in a conservation area and is not a listed building. It is not in an area of outstanding natural beauty; a National Park; or a World Heritage Site.

Proposal

This application is for a Lawful Development Certificate for a proposed rooflight and separate Cabrio rooflight to be installed on the east side of the outbuilding looking over the rear garden of 30 Hillside. A determination is sought as to whether the works comprise permitted development under Class E. The planning merits of the works are not for consideration as part of this application.

The application form states that 'the proposed works are deemed to be permitted development under Class E of the GPDO as they are 'alterations' to an existing detached building.'

The accompanying floorplan shows the ground floor with double garage doors on to the driveway and the more northerly of the two doors giving access to a partitioned 'store'. The second garage door gives access to a 'garage' which extends to the rear garden boundary and behind the separate 'store' referred to previously. This garage also has a window and French doors on its east elevation onto the garden of the main house. A separate drawing saying 'first/roofspace (existing and proposed)' is not annotated for any particular use/purpose.

Relevant Planning History

AWDM/1416/15 - Non-Material amendment to approved application to install two rooflights (one cabrio and one standard) on southeast roofslope. Refused 4.2.16

ADC/0245/09 - Extension to garage and alterations to form pitched roof over existing flat roof of garage. Granted 12.8.09

SW/65/97/TP - Rear Extension And Rooms In Roofspace (With Enlargement Of Roof At Rear And Rear Dormer). Granted 8.12.97

SW/46/97/TP - Rear Extension With Gabled Roof; Rooms In Roofspace; And Balcony At Rear. Refused 18.8.97

SW/36/94/TP - Rear extension to garage. Granted 12.7.94

Consultations

n/a

Representations

n/a

Relevant Planning Policies and Guidance

Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2015.

Class E – buildings etc incidental to the enjoyment of a dwellinghouse

Permitted development

E. The provision within the curtilage of the dwellinghouse of

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

Development not permitted

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, PA or Q of Part 3 of this Schedule (changes of use);
(b) the total area of ground covered by buildings, enclosures and containers within thecurtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

(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;
(d) the building would have more than a 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;
(h) it would include the construction or provision of a verandah, 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.

Interpretation of Class E
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.

Planning Assessment

With regards to the outbuilding, the relevant legislation is the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2015 in which Schedule 2, Part 1, Class E explains the criteria under which outbuildings can be erected, or altered**,** in the garden of a domestic dwelling by a householder as permitted development which would not require planning permission.

Technical guidance is contained in the Government publication 'Permitted development for householders' April 2016 which explains further about permitted development for incidental outbuildings giving examples including garden sheds, other storage buildings and garages as long as they can 'properly be described as having a purpose incidental to the enjoyment of the occupants of the house'.

Consideration

The key tests here are;

1. is the use of the building incidental to the enjoyment of the dwellinghouse to enjoy the permitted development tolerances under ClassE ?

2. and is the building more than one storey

3. Procedural compliance

Incidental to the enjoyment of the dwellinghouse

This pair of garages was originally built as a garage for each of nos. 30 and 32 Hillside. At some point 32's garage was included into the curtilage of No. 30. The extension to the garages agreed in 2009 showed an extension to the rear of the garage originally within the curtilage of No. 32 and a new pitched roof over the two. The separating wall between the two was shown on the 'proposed floorplan' and the application was described by the applicant as 'extension and roof alterations to existing detached garage'. The application did not show a first floor. It did not show a front gablet window.

I have revisited the site and was shown around the outbuilding by the homeowner. I noted again the presence of a staircase up to a first floor inside the building, first noted at my site visit in January 2016. The first floor still had a pool table in it, chairs and some desk areas under the front gablet window.

The ground floor has a separate garage (formerly the garage of No. 32), as indicated on the accompanying floorplan and annotated 'store'. The rest of the floorspace is open plan. It contains gym equipment and a kitchen area, both of which were in position when I was there in 2016, and other domestic storage items. It also now includes a partitioned WC in the north west corner which is believed to have been added since 28th January 2016. The homeowner advised that a plumbing business is run from the 'store' and that the WC was installed so that workers do not have to enter the main dwelling. A hot drinks machine was on the kitchen counter but it was not clear whether it works or indeed whether any other aspect of the kitchen is operational.

The homeowner advised that the ground floor 'store' is used to support a business use and that the 'garage' area of the ground floor is at least in part used by persons connected with the plumbing business and not resident at 30 Hillside.

The courts have interpreted the meaning of incidental in relation to Class E.

In *Emin v Secretary of State for the Environment and Mid-Sussex County Council, QBD, 1989, 58 P&CR* 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 also 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.

It is clear that incidental cannot be a dwellinghouse nor, therefore, can it be for something for the provision of a dwellinghouse purpose, such as a bedroom or kitchen or other primary accommodation.

That said, a "purpose incidental to the enjoyment of the dwellinghouse as such" is a broad concept. It is a matter of fact and degree in each case. The building must be "required" for the incidental purpose. It is a matter primarily for the applicant to demonstrate what incidental purposes will occur.

From the above and the facts of the case, the evidence indicates a current substantial non-incidental use of the existing building. This conclusion is underlined by the substantial scale of the building, relative to the house. The provision of a WC and kitchen facilities also points to non-incidental use. No evidence has been advanced to indicate any such use has acquired lawfulness status from the passage of time.

Moving on from the current use, it is also important to consider what the use may be in the future as facilitated by the proposed works subject of the current application.

In Rambridge v SSE (1996) the court held that a building could not be erected for a purpose incidental to the enjoyment of the dwellinghouse as such if the true intention was to provide primary residential use relying on s55(2)(d) of the Act to achieve that purpose. The court held that would be a sham whatever the gap in time.

In this case there is genuine concern that this building and the alterations proposed are intended to create at some point in the future a unit of residential accommodation, whether ancillary or independent. The 2009 permission to extend the garages did not refer to a first floor and it is not known exactly when this first floor was erected.

A cabrio rooflight and further rooflight seems excessive to light a first floor games room. Failure to clearly and correctly illustrate and explain the existing and proposed uses undermines the applicant's case that this building is to continue to be used for incidental purposes, even if it currently were.

To conclude, the evidence indicates that subsequent to granting permission in 2009 the building is not being used exclusively for purposes 'incidental to the enjoyment of the occupants of the house' and therefore the alterations proposed in this application- ie the introduction of rooflights - cannot be considered to be permitted development under Class E of the GPDO.

<u>More than one storey</u>

Class E also precludes the provision of an outbuilding with more than one storey. The OED defines a storey as *A part of a building comprising all the rooms that are on the same level*. It therefore follows that to 'alter' a building to provide light and ventilation to an outbuilding with a first floor (as here) is precluded under class E.

<u>Procedural compliance</u>

In terms of procedural compliance, the applicant submission is materially flawed by inconsistency and omission. The floorplan submitted with this application is inconsistent with what exists on the ground today. It does not show the WC on the ground floor or the kitchen cabinets etc. It does not annotate the correct existing uses for the ground floor. It does not show the staircase up to the first floor. ‘

Also the submitted drawings do not show the existence of a first floor and do not annotate its existing or future use it simply states , first/roofspace (existing and proposed’).

This inconsistency and the lack of information about the existing or intended use of the building also prevents me from concluding this building is ‘incidental’ to the main dwelling and can be altered as such under Class E.

Conclusion

The onus is on the applicant to demonstrate the proposal is lawful. The LPA is required to assess the submission on the balance of probabilities.

The assessment above indicates the proposal does not comply with the requirements of the Order and the Certificate should therefore be refused.

Recommendation

REFUSE for the reason:-

The proposed application details are inconsistent with facts on the ground and fail to demonstrate that the existing building is currently being used or will in future be used exclusively for purposes incidental to the enjoyment of the main dwellinghouse known as 30 Hillside. The scale of the building, the uses of the building and its facilities and the proposed alterations to facilitate use of a first floor also indicate the existing and proposed use is not incidental to the enjoyment of a dwellinghouse. In any event, the building in question is more than one storey. As such the proposal fails to meet the requirements of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (Amendment) (No.2) (England) Order 2015 and is not permitted development.

Is recommendation contrary to any representations? N

Case Officer signed: MOK Date: 30.1.17

Authorised and signed by: PD Date: 30.1.17