

Appeal Decision

Site visit made on 7 October 2016

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 8 November 2016

Appeal Ref: APP/A0665/X/16/3149309

Street Hey, Street Hey Lane, Willaston CH64 1SU

- 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 failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr and Mrs S Kewin against Cheshire West and Chester Council.
 - The application (Ref. 7/2015/4101) is dated 18 February 2016.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is residential outbuilding for the use of gymnasium/studio.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed development which is considered to be lawful.

Reasons

2. Street Hey is a substantial semi-detached dwelling in extensive grounds within which is an outdoor swimming pool. To the north of, and close to, the dwelling is a detached outbuilding for which planning permission was granted in January 2016 for 'change of use of existing outbuilding to residential use (C2 use)'. The proposed outbuilding that is the subject of the appeal would, in part, replace the accommodation previously provided by the existing outbuilding.
 3. At the time the application was submitted the aforementioned planning permission had not been implemented but prior to the site visit it had, and works of conversion had commenced. It was agreed by the main parties at the site visit that this necessitated submission of a revised site plan and that this plan should be considered in determination of the appeal. The main parties also agreed, after the site visit, that the appeal should be determined on the basis of a proposed building of reduced scale. No injustice would be caused and the revised drawings subsequently submitted, drawing nos. L(81)002 Rev P11, L(91)002 Rev P4, L(91)003 Rev P3 and L(91)012 Rev P4, have therefore been considered in determination of the appeal. The Council's comments in their statement can be applied to the revised scheme.
 4. The Council accepts that the building would be within the curtilage of the dwellinghouse and that it would satisfy the dimensional conditions of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO). They maintain, however, that the proposed building, given its use and size, cannot be considered to be required for a purpose incidental to the enjoyment of the dwellinghouse.
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5. The main issue in this case is whether the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse.

6. The Council has referred to the judgement in *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416 (Emin). Emin established that "The term 'required' is...interpreted for the purposes of applying Class E as meaning 'reasonably required'". The Council's statement was based on the premise that there is "...an existing outbuilding on the site..." and that "...there is no indication that works to implement the permission have commenced on site". The permission has been implemented and an assessment of the main issue will take this into account.

7. The most significant consideration in this case is the implementation of the planning permission. In this regard it is entirely reasonable for the Appellants to wish to replace the accommodation provided by the existing outbuilding in a new ancillary building; particularly as they have ample space within the curtilage of their dwelling to do so. Other factors include the need to provide space, to replace inadequate existing provision as seen at the site visit, to house machinery and equipment associated with the swimming pool. Otherwise the accommodation that would be provided by the proposed outbuilding is no larger than is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

8. For the reasons given above the Council's intended refusal to grant an LDC in respect of the provision within the curtilage of the dwellinghouse of a building required for purposes incidental to the enjoyment of the dwellinghouse at Street Hey, Street Hey Lane, Willaston was not well-founded and the appeal thus succeeds. The powers transferred under section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 18 February 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, would have been lawful within the meaning of Section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations are development permitted under the provisions of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015

Signed

John Braithwaite

Inspector

Date: **8 November 2016**

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First Schedule

Residential outbuilding for the use of gymnasium/studio as shown on drawing nos. L(81)002 Rev P11, L(91)002 Rev P4, L(91)003 Rev P3 and L(91)012 Rev P4

Second Schedule

Land at Street Hey, Street Hey Lane, Willaston

NOTES

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).

It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation which is materially different from that described, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the local planning authority.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **8 November 2016**

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Land at Street Hey, Street Hey Lane, Willaston CH64 1SU

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Scale: not to scale

