
Appeal Decisions

Site visit made on 18 July 2017

by Roger Clews BA MSc DipEd DipTP MRTPI

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

Decision date: 31 July 2017

Appeal A: Ref: APP/D4635/X/17/3169654
102 Coalway Road, Wolverhampton WV3 7NB

- 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 HJH Developments Ltd against the decision of Wolverhampton City Council.
 - The application Ref 16/01343/CPL, dated 2 December 2016, was refused by notice dated 10 February 2017.
 - 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: Demolition of existing detached office/garage building and the erection of a proposed detached ancillary building with detached double garage.
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Appeal B: Ref: APP/D4635/W/17/3169657
102 Coalway Road, Wolverhampton WV3 7NB

- The appeal is made under section 78 of the Town and Country Planning Act 1990 against a refusal to grant planning permission.
 - The appeal is made by HJH Developments Ltd against the decision of Wolverhampton City Council.
 - The application Ref 16/01113/FUL, dated 11 October 2016, was refused by notice dated 17 November 2016.
 - The development proposed is: Demolition of existing detached office/garage building and erection of single garage for use in association with No.102 Coalway Road. Erection of two 2-bedroom bungalows with associated garage.
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Decisions

Appeal A: Ref: APP/D4635/X/17/3169654

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Appeal B: Ref: APP/D4635/W/17/3169657

2. The appeal is dismissed.

Procedural matters

3. In correspondence the neighbours at 104 Coalway Road, Mr and Mrs Bird, invited me to view the appeal site from their property. I called at their front

door during my site visit, but no-one answered. However, I am satisfied that I was able to see everything I needed to make my decisions from within the garden of No 102 and from the street in front.

4. Mr & Mrs Bird say that the submitted location plan does not accurately show the boundary between Nos 102 and 104. That may be true but the plan is sufficient to identify the appeal site. The error, if there is one, would not appear to affect the feasibility of the appeal proposals.

Background

5. 102 Coalway Road is a semi-detached house in a row of similar dwellings. Like most of its neighbours it has a very long back garden. Between it and No 104 is a wide access leading to the existing office/garage building which it is proposed to demolish. The rear half of what was originally No 100's back garden has been joined to No 102's and the wide plot thus formed at the end of No 102's garden is the site for the new buildings that are proposed in each appeal.
6. In the LDC appeal the proposed ancillary building¹ would be sited centrally in the plot, close to No 102's rear boundary, with the proposed double garage to the side of it. In the planning appeal the two bungalows would be buildings of almost identical design to the proposed ancillary building, but with higher roofs. They would stand side-by-side in the plot, facing the boundary with No 104, with the double garage between them. A new single garage for No 102 would be built between the rear boundary of No 100 and the nearer of the two new houses.

Reasons

Appeal A – the LDC appeal

7. The LDC appeal must be decided purely on legal grounds. The planning merits or demerits of the proposal are not relevant to my decision.
8. The appellant claims that the construction of the proposed detached ancillary building and detached double garage would be permitted development under Schedule 2, Part 1, Class E of the *Town and Country Planning (General Permitted Development) (England) Order 2015*, as amended [the GPDO]. Class E permits the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.
9. The GPDO places size limits on such buildings but the proposed development would not exceed them. The issue is therefore whether the proposed ancillary building and double garage would be required for a purpose incidental to the enjoyment of the dwellinghouse as such. On the submitted plans the ancillary building is shown as having four principal rooms, labelled "Office", "Craft Room", "Gymnasium" and "Sauna/Changing". There is also an entrance lobby, a central hallway connecting the principal rooms, and a shower-room.
10. A "purpose incidental to the enjoyment of a dwellinghouse" does not include purposes that would normally be part and parcel of the use of the

¹ I use the appellant's term "ancillary building" for convenience. The term "ancillary" is not used in the relevant section of the GPDO.

dwellinghouse itself. Thus, for example, a bedroom or a kitchen would not be regarded as accommodation for incidental purposes. However, the purposes to which the principal rooms in the ancillary building would be put, as indicated on the submitted plans, are all uses that may reasonably be regarded as incidental to the enjoyment of a dwellinghouse as such. Many dwellings up and down the country have outbuildings that are used for one or more of those purposes.

11. The fact that No 102 is currently let to a tenant, and the lack of any evidence as to why the tenant requires the ancillary building, are not material to the lawfulness of the proposal. The question is whether, in principle, the building itself is required for purposes incidental to the enjoyment of the dwellinghouse, not whether any particular occupier wishes to use it for those purposes. In that context, the layout of the building and the size of each principal room are suitable for the incidental uses indicated on the plans. It would be reasonable also to provide a shower-room in the same building as a gym.
12. I agree with the Council that the design of the ancillary building is akin to that of a dwellinghouse rather than a conventional outbuilding. As noted above, it is virtually identical to that of the proposed houses in the planning appeal, apart from the height of its roof. But that does not mean it is unsuited to the incidental purposes indicated on the submitted plans.
13. Size is not necessarily determinative of whether or not a building can be regarded as providing for incidental purposes, but in this case I note that the proposed ancillary building has a smaller footprint than the host dwelling at No 102. It is also much less tall. This is not a case in which a building proposed for incidental purposes would dwarf its host – on the contrary, it would be considerably smaller. The location of the ancillary building at the end of the garden, some 30m from the house, is not especially convenient but would not prevent it providing for the incidental purposes that are indicated.
14. The Council say that the submission of the LDC application soon after the refusal of the planning application “cannot be considered a coincidence”, and that the appellant’s intention is for the ancillary building to become a dwelling. That may be true but it is irrelevant to my consideration of whether or not the provision of the ancillary building would have been lawful when the LDC application was made. If the ancillary building is built to be used for incidental purposes, any future application to convert it to a separate dwelling would need to be considered on its own merits. Granting the LDC is no guarantee that planning permission would be granted for such a conversion.
15. Turning to the proposed double garage, its indicated use for parking vehicles belonging to residents of No 102 is clearly a purpose incidental to the enjoyment of the dwellinghouse as such. As with the proposed ancillary building, its location would not be especially convenient but would not prevent it from fulfilling that purpose. Its size and design are suited to its intended function.
16. The demolition of the existing office/garage building would not require planning permission. It may or may not be that it could provide for one or more of the purposes for which the proposed new buildings are indicated, but that is not relevant to the LDC appeal.
17. Drawing all these points together, I conclude that the construction of the proposed detached ancillary building and detached double garage would be

permitted development under Schedule 2, Part 1, Class E of the *Town and Country Planning (General Permitted Development) (England) Order 2015*, as amended. Accordingly, a certificate of lawful development should be granted.

Appeal B – the planning appeal

18. The main issues in the planning appeal are the effect of the proposed development on the character and appearance of the surrounding area, and its effect on the living conditions of neighbouring residents.
19. The appeal site is part of an established residential area. There is a marked contrast between the fairly dense frontage development on this part of Coalway Road, and the undeveloped character of their long back gardens. This is a key aspect of the area's character and local distinctiveness. The gardens combine with adjacent gardens of houses in Church Road and Myrtle Grove, and with the big old cemetery of St Philip's Church, to create an extensive green area.
20. Mature trees and planting in many of the gardens and in the cemetery combine to produce a very attractive, sylvan environment. The overall impression one has in these back gardens is of a tranquil oasis. There are occasional small garden sheds, greenhouses and summerhouses, but these do not materially impinge on the predominantly undeveloped character.
21. The construction of two substantial bungalows and two garage buildings in the rear half of No 102's garden would be entirely at odds with that undeveloped character. The closely-spaced group of buildings would stand in stark and obvious contrast to the extensive green surroundings. It would significantly weaken the contrast between developed street frontage and open back gardens that is a fundamental aspect of the area's character and its local distinctiveness.
22. Residents' activity in the gardens of the new houses would almost inevitably be more intensive than that which currently occurs in this part of No 102's garden. Together with vehicle movements to and from the garages of three separate properties, this additional activity would intrude into and noticeably detract from the tranquillity that is presently experienced both in the existing rear gardens and in the neighbouring part of the cemetery.
23. The bungalow at 31 Coalway Road for which the Council granted planning permission last year was built in front of an existing bungalow, but on the building line established by the neighbouring houses. In that case, therefore, the new development is consistent with the prevailing layout of the surrounding area. It does not provide justification for the present proposal which would be markedly out of keeping with the area.
24. For these reasons I conclude that the proposed development would detract from the character and appearance of the surrounding area and so conflict with policy ENV2 of the *Black Country Core Strategy*, and saved policies D4, D6 and HE1 of the *Wolverhampton Unitary Development Plan* [UDP].
25. The two bungalows, each some 5.6m tall, would be clearly visible from the adjacent back gardens of 98 and 104 Coalway Road, notwithstanding the boundary planting. Buildings of this size would appear overbearing to the residents of those neighbouring properties when out in the rear parts of their gardens. They would significantly diminish the sense of openness that presently characterises those private garden spaces. At the same time, the

vehicle movements and additional residential activity associated with the proposed development would intrude into and detract from the tranquil nature of the gardens.

26. Consequently I find that the proposed development would detract from the living conditions of neighbouring residents at 98 and 104 Coalway Road and so conflict with UDP policies D4 and D8.
27. I consider that the modest benefit associated with the provision of two new dwellings in this sustainable location would be significantly and demonstrably outweighed by the harmful effects I have identified. Accordingly, for the reasons given above and having had regard to all other matters raised, I conclude that the planning appeal should be dismissed.

Roger Clews

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 2 December 2016 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations would be permitted development under Schedule 2, Part 1, Class E of the *Town and Country Planning (General Permitted Development) (England) Order 2015*, as amended.

Roger Clews

Inspector

Date: 31 July 2017

Reference: APP/D4635/X/17/3169654

First Schedule

Demolition of existing detached office/garage building and the erection of a proposed detached ancillary building with detached double garage, in accordance with the following plans: Block Plan No 1095/600, and Ancillary Building and Garage Floor Plans and Elevations No 1095/700 Rev A.

Second Schedule

Land at 102 Coalway Road, Wolverhampton WV3 7NB

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: 31 July 2017

by **Roger Clews BA MSc DipEd DipTP MRTPI**

Land at: 102 Coalway Road, Wolverhampton WV3 7NB

Ref: APP/D4635/X/17/3169654

Not to scale

