
Appeal Decision

Site visit made on 5 December 2017

by Iwan Lloyd BA BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 February 2018

Appeal Ref: APP/T3725/X/17/3180243
Moat House, Church Road, Honiley CV8 1TJ

- 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 Mr & Mrs Wilson against the decision of Warwick District Council.
 - The application Ref W/17/0419, dated 8/03/2017, was refused by notice dated 16/05/2017.
 - 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 proposed new garage block and leisure facilities.
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Decision

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

Reasons

2. The description of the proposed development '*Proposed erection of new outbuilding comprising garage, spa/sauna, gym and leisure facilities*' has been used by both parties in their submissions, and so no prejudice would arise in dealing with the appeal on this basis.
3. The appeal site comprises a large residential garden with a detached two storey dwellinghouse with an access driveway on the southern side off Church Lane near the junction with the A4177. An LDC is sought for the erection of an outbuilding within the garden grounds of the dwellinghouse. This proposed single storey structure would accommodate a 6 car space garage, maintenance area, office, two changing rooms, shower, sauna/spa, lobby, gym, games/relaxation room.
4. The Council contend that the proposed building cannot be reasonably described as incidental to the enjoyment of the dwellinghouse, and cannot therefore be permitted development (PD). There is no dispute in relation to all other requirements of the Order¹.
5. An 'incidental' or ancillary use is one that would not be considered as an integral part of a use. An incidental use is one that has a normal functional

¹ Article 3, Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015

relationship with the primary use of the planning unit. The use of a domestic garage for parking or storage would normally be considered incidental to the use of a dwellinghouse, but use for primary living accommodation would be integral to the primary residential use of such a planning unit. The Courts have held that for an outbuilding/annexe to be PD under Class E, it must be used for a purpose incidental to the enjoyment of the dwellinghouse and not a primary residential use. The tests to be applied are whether the uses of the outbuilding would remain ancillary to the main use of the property as a dwelling and be 'reasonably required'.

6. The physical size of the outbuilding is not a determining factor but it is an important consideration. In this case the Council notes that the building has a similar footprint to the dwellinghouse. However, the dwellinghouse has two floors and is larger in footprint than the outbuilding. The proposed outbuilding would accommodate a small area of the garden and a large area would remain, and in this regard the size and scale of the outbuilding is reasonable.
7. Mr Wilson is a keen classic car collector and requires the garage which is configured around two double doors for storage and maintenance. Mrs Wilson is recovering from a health condition, and so is the appellants' son. Both require an exercise regime, and the gym, games/relaxation room, spa and sauna form part of the rationale for their recovery corroborated by various documents submitted by health professionals as part of the appeal. In this regard, I do not consider that the games/relaxation room is a duplication of primary accommodation as it has been shown it facilitates the reasonable requirements of the appellants to pursue their leisure interests and their recovery.
8. The office room is intended to be used by both appellants. I note the Council's concern that it is very large for its intended purpose; nevertheless, a home office of this size would accommodate two desks and office equipment, which would not be unusual or unreasonable. It is accepted that the shower room and changing rooms are ancillary to the gym, sauna and spa and are reasonably necessary.
9. There is no evidence to undermine that of the appellants which is sufficiently precise and unambiguous. I conclude that the appellants have shown on the balance of probabilities that the proposed outbuilding would be permitted by Class E of the Order. I have had regard to all the other matters raised but none alter my decision. The Council's refusal to grant a LDC was not well-founded and the appeal succeeds. I exercise accordingly the powers transferred to me in Section 195(2) of the 1990 Act as amended.

Iwan Lloyd

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 8/03/2017 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would have benefitted from deemed planning permission pursuant to Article 3, Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 as the proposed development is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Signed

Iwan Lloyd

INSPECTOR

Iwan Lloyd BA BTP MRTPI

Inspector

Date: 26 February 2018

Reference: APP/T3725/X/17/3180243

First Schedule

Proposed erection of new outbuilding comprising garage, spa/sauna, gym and leisure facilities as shown on application W/17/0419 dated 8/03/2017 with accompanying drawings nos. A004, A005 and D005

Second Schedule

Land at Moat House, Church Road, Honiley CV8 1TJ

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 26 February 2018

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Land at Moat House, Church Road, Honiley CV8 1TJ

Reference: APP/T3725/X/17/3180243

Scale: Not to scale

