

---

## Appeal Decision

Site visit made on 13 February 2019

**by Sandra Prail MBA, LLB (Hons), Solicitor (non-practising)**

**an Inspector appointed by the Secretary of State**

**Decision date: 04 March 2019**

---

**Appeal Ref : APP/G3110/X/18/3206158**

**Land at 33 Perrin Street, Headington, Oxford, OX3 7AS.**

- 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 lawful development certificate (LDC) by Oxford City Council dated 18 June 2018.
- The appeal is made by Dr. Antonio Berlanga.
- The application ref. 18/00991/CPU was dated 13 April 2018.
- The application was made under section 192 (1) (a) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is (proposed) demolition of garden shed and erection of a rear garden outbuilding for purposes incidental to the use of the main dwellinghouse.

**Summary of Decision: the appeal is allowed and a certificate of lawful use or development is issued in the terms set out in the Formal Decision**

---

### Preliminary Matters

1. I should explain that the planning merits of the development are not relevant to this appeal which relates to an application for a lawful development certificate (LDC). My decision rests on the facts of the case and the interpretation of any relevant planning law or judicial authority. The burden of proving relevant facts rests on the Appellant and the test of evidence is made on the balance of probability.
2. The application refers to the proposed development for use incidental to the main dwellinghouse and I have used this description in the header above rather than the development as described in the Council's notice of refusal which does not expressly refer to the proposed use.

### Main Issue

3. I consider that the main issue is whether the Council's decision to refuse to grant a LDC was well-founded.

### Reasons

4. The appeal site is a detached dwelling with a generous rear garden. At the end of the garden is a storage shed which faces onto New High Street. The application the subject of this appeal is the proposed demolition of the garden shed and erection of a rear garden outbuilding for purposes incidental to the use of the main dwellinghouse.

5. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Class E Schedule 2 Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants permission for the provision within the curtilage of a dwellinghouse of any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such subject to certain conditions and limitations.
6. The main argument in this case concerns whether the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse. In considering whether the purpose is incidental it is necessary first of all to consider the purpose(s) for the building and the incidental quality in relation to the enjoyment of the dwelling. Secondly, it is necessary to consider whether the building is genuinely and reasonably required in order to accommodate the uses(s) or activities and consequently achieve that purpose.
7. The Council argues that the outbuilding would not be incidental by virtue of its scale, uses proposed and independence in terms of access to New High street. There is no disagreement that in all other respects Class E is met and I have no reason to conclude otherwise.
8. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse. As a matter of fact and degree I find the proposed outbuilding to be of significant size when compared to the host dwelling. Size alone is not determinative. In assessing whether the outbuilding is genuinely and reasonably required for incidental purposes it is necessary to apply objective reasonableness in consideration of all of the relevant facts and circumstances.
9. The application plans show the proposed building to comprise a pool, bar, shower room, yoga studio/gym and photography workshop. A swimming pool by its very nature must occupy a sizeable area. In my view the proposal is not unreasonable in size for purposes of family swimming and enjoyment. I also consider the bar, shower room, yoga studio/gym and photography workshop to be relatively modest in size and likely to be what is needed to fulfil their purpose.
10. Turning to the proposed uses on the face of it I consider that each is capable of being a purpose incidental to the enjoyment of a dwellinghouse. A shower room would usually be comprised within the everyday living facilities of the dwelling but I see no reason in principle why it could not be regarded as part of an incidental use to the pool.
11. The Council argues that there is no evidence as to whether the uses would be solely for the personal enjoyment of the occupiers. Whilst that evidence was not provided as supporting information when the Council determined the application I have no reason to doubt the evidence before me which explains that the uses are for the sole enjoyment of the occupiers. Whilst I accept that the variety of proposed uses is quite wide the explanations provided by the Appellant are persuasive and discharge the burden of proof in showing on a balance of probabilities that the proposal falls within Class E of the GPDO.

12. The Council is concerned about an access onto New High Street and that the building could be used independently from the main dwellinghouse. But this is speculation and there is insufficient evidence before me to cast doubt on the Appellant's evidence.
13. I conclude that on the evidence before me that the purposes for the building can reasonably be regarded as incidental in relation to the enjoyment of the dwelling and that the building is genuinely and reasonably required in order to accommodate those uses.
14. I note the appeal decisions drawn to my attention but each case is determined on its own particular facts and nothing in the decisions alters my conclusions in this case .
15. For the reasons given above I conclude, on the evidence now available that the Council's refusal to grant a certificate of lawful use or development in respect of demolition of garden shed and erection of a rear garden outbuilding for purposes incidental to the use of the main dwellinghouse at 33 Perrin Street, Headington, Oxford, OX3 7AS was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act as amended.

### **Formal Decision**

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

*S. Prail*

**Inspector**



---

## LAWFUL DEVELOPMENT CERTIFICATE

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

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

---

**IT IS HEREBY CERTIFIED** that on 13 April 2018 the operation described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and marked edged red on the plan attached to this certificate would have been lawful within the meaning of section 192(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed demolition of garden shed and erection of a rear garden outbuilding for purposes incidental to the use of the main dwellinghouse would have been subordinate and ancillary to the use of the main house as a single dwellinghouse and would not give rise to a material change of use of the planning unit and would have been permitted development by virtue of article 3(1) and Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended). It does not therefore involve development requiring planning permission.

The development does not contravene the requirements of any enforcement notice in force.

*S. Prail*

INSPECTOR

Date: 04 March 2019

Reference: APP/G3110/X/18/3206158

### **First Schedule**

The demolition of garden shed and erection of a rear garden outbuilding for purposes incidental to the use of the main dwellinghouse as shown on the drawing submitted with application ref. 18/00991/CPU dated 13 April 2018 reference PL:101b.

### **Second Schedule**

Land at 33 Perrin Street, Headington, Oxford, OX3 7AS.

## **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, would not have been 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/use 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: 04 March 2019

**by Sandra Prail MBA, LLB(Hons), Solicitor (non-practising)**

**Land at** 33 Perrin Street, Headington, Oxford, OX3 7AS.

**Appeal ref:** APP/G3110/X/18/3206158

Not to Scale

---

