



Appeal Decision

Site visit made on 19 August 2019

by Thomas Shields DipURP MA MRTPI

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

Decision date: 27 August 2019

Appeal Ref: APP/Y1945/X/18/3208872
26 Courtlands Drive, Watford, WD17 4HT

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Steve Peters against the decision of Watford Borough Council.
 - The application Ref 18/00661/LDC, dated 30 May 2018, was refused by notice dated 18 July 2018.
 - The application was made under section 192(1)(b) of the Act.
 - The development for which a LDC is sought is a single storey detached garden outbuilding for incidental use.
-

Decision

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

Application for costs

2. An application for costs was made by Mr Steve Peters against the Watford Borough Council. That application is the subject of a separate Decision.

Procedural matters and background

3. The relevant date for determining whether the outbuilding subject of the appeal would be lawful is the date the application was submitted to the Council, that is 30 May 2018. In order for a LDC to be granted under s192 it is necessary for the appellant to demonstrate, on the balance of probabilities, that the development would be lawful. Matters such as planning policies and the effect of the proposed outbuilding on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
4. Submitted to the Council with the LDC application were a site location plan and a detailed outbuilding plan. The plan shows the proposed outbuilding as being approximately 12m x 6m, and 2.3m and 4m in height to the eaves and ridge respectively. It is located at the far end of the garden away from the house. Internally the building is shown to have a swim spa pool, a seating area, a changing and shower room with WC and wash handbasin, and storage/circulation space.
5. As part of his appeal the appellant submitted a revised outbuilding plan, CD-01-A. In comparison to the first plan there are slight external differences to

fenestration. Internally, the layout is rearranged to include a sauna. Given that the differences between the two drawings are relatively minor I have taken both into account.

6. At the date of the application to the Council construction of the building had commenced and was substantially completed at the date of my inspection, although internally a swim spa pool had not yet been installed and the layout differed from both of the submitted plan drawings. For the sake of clarity, my decision is based on the submitted drawings.

Main Issue

7. The main issue is whether the Council's decision not to issue an LDC was well founded.
8. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 grants planning permission for classes of development listed in Schedule 2. Subject to a number of limitations Class E(a), Part 1, Schedule 2 includes the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of that dwellinghouse as such. There is no disagreement between the parties that the limitations (E.1 to E.3) to Class E(a) are not breached, and I come to the same conclusion.
9. The single point of dispute between the parties, and upon which the main issue turns, is whether the proposed outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse.

Reasons

10. The parties have referred to previous appeal decisions, two of which have been submitted in evidence¹. However, the proposed developments, circumstances, and other physical factors in those cases are not the same as the appeal before me. I have therefore taken them into account in so far as they provide useful background information, but each case must be individually judged on a fact and degree basis in the light of the particular circumstances. That is the approach I have taken here.
11. Both parties refer to the judgment in *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416, which I agree is directly relevant to this appeal. It establishes that the term incidental was held to connote an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. For the purposes of applying Class E the term "required" should be interpreted as "reasonably required" rather than the "unrestrained whim" of the occupier. Also, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration although not conclusive by itself.
12. The critical test to be applied is firstly whether the uses of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain ancillary or subordinate to the main use of the property as a dwellinghouse, and secondly; whether the proposed outbuilding is "reasonably required" in order to accommodate those uses.

¹ APP/Y1945/X/17/3175148, APP/M5450/X/18/3194343,

13. I am satisfied that the proposed uses of the outbuilding for spa swimming and sauna with seating and storage areas are leisure uses that would be ordinarily incidental to the enjoyment of a dwellinghouse. There is no argument made that they would not be so. Additionally, in order to facilitate the spa swimming and sauna the provision of WC, changing and showering facilities within the outbuilding would be reasonably necessary, particularly during poor weather conditions and given the approximate 30 metres distance between the outbuilding and existing facilities in the main house. As such, their provision would be integral to the incidental uses, rather than being the provision of primary living accommodation, hence there would be no conflict with the Technical Guidance² for Class E(a).
14. Having regard to both of the submitted layout drawings, the areas specified for particular uses are of a reasonable domestic scale and are not excessive. With regard to the size of the outbuilding relative to those uses, I note that the building would have a 72m² footprint. That is substantially smaller than the footprint of the main house and would occupy an area significantly smaller than 50% of the curtilage. As a matter of fact and degree I find that the size and scale of the outbuilding is not disproportionate to the intended uses it would accommodate and is thus "reasonably required". On this basis I come to the conclusion that the outbuilding would be permitted development.
15. The Council's approach in determining the LDC application, and as amplified in their evidence, relies heavily on their concern that *"the proposed outbuilding would be of a design, size and layout capable of being used as a self-contained dwelling in its own right"*. They took account of their consideration of the appellant's earlier application for planning permission³ for an outbuilding (of the same size footprint and location) to accommodate a gym/home office, relaxation room, sauna and shower room, and which was refused permission because of the absence of a s106 planning obligation to prevent use of the building as a self-contained dwelling.
16. However, the Council's approach in determining the LDC application is flawed. Fear that a proposed Class E building has the potential to be altered so as to become a self-contained dwelling at some point in the future does not form a sound basis for refusal of a LDC. Consideration of lawfulness should be based solely on the development that has been proposed in the LDC application. The Council has powers to investigate and take enforcement action in the event that a Class E building were to subsequently commence unauthorised use as a self-contained dwelling.
17. A second application for planning permission⁴ for identical development as shown in drawing CD-01-A was submitted during the course of this appeal and approved by the Council in December 2018 subject to a s106 planning obligation. While that may be the case it does not affect my conclusion that the development, as proposed in CD-01-A in this appeal, would be permitted development.

² Permitted development rights for householders Technical Guidance, DCLG (2017)

³ Ref 18/00369/FULH

⁴ Ref 18/01141/FULH

Conclusion

18. 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 a single storey detached garden outbuilding for incidental use at 26 Courtlands Drive, Watford, WD17 4HT was not well-founded and that the appeal should succeed. I exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Thomas Shields

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 30 May 2018 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 proposed development would have benefitted from deemed planning permission pursuant to Article 3 of, and Class E(a) of Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Thomas Shields

Inspector

Date 27 August 2019

Reference: APP/Y1945/X/18/3208872

First Schedule

A single storey detached garden outbuilding for incidental use.

Second Schedule

Land at 26 Courtlands Drive, Watford, WD17 4HT

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: 27 August 2019

by Thomas Shields DipURP MA MRTPI

Land at: 26 Courtlands Drive, Watford, WD17 4HT

Reference: APP/Y1945/X/18/3208872

Do not Scale

