



Appeal Decision

Site visit made on 28 August 2019

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 October 2019

Appeal Ref: APP/H1515/X/18/3205313

Oaklands, Wyatts Green Road, Wyatts Green CM15 0PT

- 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 N Othen against the decision of Brentwood Borough Council.
- The application Ref 18/00056/S191, dated 15 January 2018, was refused by notice dated 22 March 2018.
- The application was made under section 191(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 a detached outbuilding used incidentally to the enjoyment of the dwellinghouse as such.

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

Application for costs

1. An application for costs was made by Mr N Othen against Brentwood Borough Council. This application is the subject of a separate Decision.

Main Issue

2. The main issue in this appeal is whether the available evidence shows that erection of the outbuilding was granted planning permission by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995 (GPDO 1995).

Reasons

3. The outbuilding occupies a substantial part of the rear garden of a semi-detached bungalow. The outbuilding has a ridged roof and has an overall height of less than four metres. During my site visit, I observed that the outbuilding contained a garage, snooker room and hobby/office area, a gym room, a changing room/bathroom and a cloakroom.
4. It is for the appellant to show that an LDC should be granted, the relevant test of the evidence being on the balance of probability. As the planning merits of the outbuilding are not relevant when considering whether to grant an LDC, I am unable to take the representations made by interested parties on such matters into account.
5. According to the appellant, foundations for the outbuilding were dug and concrete poured in stages in April 2006, most of the latter activity taking place on 25 and 27 April that year. The appellant supplied copies of site photographs

which showed amongst other things, foundation trenches filled with concrete and a partly filled foundation trench, in positions corresponding with parts of the outbuilding's footprint. Other information supplied suggested that these photographs are likely to have been taken before 9 May 2006, thereby providing support for the appellant in terms of the date the foundations were constructed. The Council's Building Control site inspection records, which show that two site inspections briefly described as 'excavations' took place in April 2006, also support the appellant's case.

6. At s56(2), the Act provides that development shall be taken to have begun on the earliest date on which any material operation comprised in the development begins to be carried out. The definition of a 'material operation' at s56(4) includes at (b) the digging of a trench which is to contain the foundations, or part of the foundations, of a building. Consequently, the available evidence suggests that on the balance of probability, the foundations laid in April 2006 commenced construction of an outbuilding at the site. The central question is therefore, whether construction of the foundations commenced the outbuilding as it existed on the application date.
7. The Building Control records are consistent with work on the outbuilding progressing slowly over several years. The records also refer to, amongst other matters, an additional excavation and foundation being constructed around September 2015. Site inspections included those on 10 September and 6 October 2015 concerning respectively, what was described as an excavation and a Damp Proof Course and a timber frame for an additional area. The 'Bing Maps' aerial photograph purporting to pre-date 20 September 2008 showed the outbuilding constructed to just above the floor slab level, with a section of concrete slab on one side. The still incomplete outbuilding with a similar footprint is shown in an aerial photograph purportedly dated 3 July 2014. In a 'Google Earth' image purportedly dated 4 September 2017 the outbuilding, which had by then been completed to roof level, had a wider footprint extending across the section of concrete slab. The increase in width corresponded to that of around one panel of the rear boundary fence.
8. Comparison of the aerial photographic images therefore largely reflects the sequence of construction documented in the Building Control records. This evidence shows that, in all likelihood subsequent to September 2015, there was a considerable increase, perhaps in the magnitude of 25%, in terms of the width and overall size of the outbuilding.
9. According to relevant case law¹, it is the date of commencement that determines the relevant GPDO a development is to be judged against. My attention was not drawn to any authority to support the Council's proposition that by undertaking works to the outbuilding to make it wider in or around September 2015, it could no longer be judged against the GPDO 1995. In erecting the outbuilding, the appellant was undertaking a development permitted by the GPDO and where as in this instance no prior approval was required, there was no need for him to produce plans or details of the structure before commencement. Moreover, there is nothing in Schedule 2, Part 1 of the GPDO 1995 which required a development permitted by Class E to be carried out in the form that it commenced. In particular, there is nothing that prevented an addition to the foundations and floor slab of a Class E outbuilding

¹ *Williams Le Roi v SSE & Salisbury DC* [1993] JPL 1033.

being constructed as permitted development. Such an addition also has no effect on when development is deemed to have commenced for the purposes of s56(2) of the Act. Therefore, the appellant was within his rights to evolve the size and design of the outbuilding as his ideas changed during the protracted period of construction, including making enlargements, as long as the structure still satisfied the limitations in Schedule 2, Part 1, Class E of the GPDO 1995.

10. In my view and as a matter of fact and degree, forming an additional foundation and floor slab and the differing external finishes and straight joints in the brickwork in that part of the outbuilding all simply represent evolution in its size and design as the appellant's ideas changed over time. None of these matters are an indication of the outbuilding being a materially different structure to that commenced in 2006. The 2006 foundations were incorporated into the outbuilding. Whilst additional foundations were required to complete the outbuilding, for the reason set out above that is not a relevant factor for the purposes of determining whether its construction had commenced.
11. Although the plans accompanying various planning and LDC applications submitted to the Council between 2011 and 2014 apparently showed a smaller outbuilding, to my mind that merely indicates the appellant's exploration of alternative forms of development as his ideas changed. In any event, as all those applications were refused the appellant was not bound by any of the details submitted.
12. For the above reasons, in the absence of evidence which cast doubt on or made the appellant's version of events less than probable, his evidence is persuasive and I afford it significant weight. Consequently, I find it more likely than not that the 2006 foundations commenced construction of the outbuilding, as they were comprised in the development. There is little evidence to indicate otherwise. As a result, there is no sound basis for concluding that the outbuilding should not be assessed against Schedule 2, Part 1, Class E of the GPDO 1995.
13. There was no suggestion by the Council that the development had involved more than a single building operation, that the outbuilding was not required for a purpose incidental to the enjoyment of the dwelling as such or that it had otherwise exceeded any of the limitations in paragraph E.1 of Class E. I have not found any reason to come to different conclusions in respect of those matters. Moreover, given the above context, the date when the outbuilding was substantially completed is of limited relevance in determining whether an LDC should be issued.
14. The above all leads me to conclude that on the balance of probability, the appellant has shown that erection of the outbuilding was granted planning permission by Schedule 2, Part 1, Class E of the GPDO 1995.

Conclusion

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 a detached outbuilding used incidentally to the enjoyment of the dwellinghouse as such was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under 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 extent of the existing operation which is considered to be lawful.

Stephen Hawkins

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 15 January 2018 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the balance of probability, planning permission for the outbuilding was granted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 1995.

Signed

Stephen Hawkins

Inspector

Date: 2 October 2019

Reference: APP/H1515/X/18/3205313

First Schedule

Detached outbuilding used incidentally to the enjoyment of the dwellinghouse as such.

Second Schedule

Land at Oaklands, Wyatts Green Road, Wyatts Green CM15 0PT.

NOTES

This certificate is issued solely for the purpose of Section 191 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 was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 2 October 2019

by Stephen Hawkins MA MRTPI

Land at: Oaklands, Wyatts Green Road, Wyatts Green CM15 0PT

Reference: APP/H1515/X/18/3205313

Scale: Not to scale

