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## Appeal Decision

Site visit made on 25 October 2019

**by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

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

**Decision date: 12 November 2019**

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### **Appeal Ref: APP/M0655/X/19/3225116**

### **150 Knutsford Road, Grappenhall and Thelwall, Warrington WA4 2PW**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 Lee McConkey against the decision of Warrington Borough Council.
  - The application Ref 2018/34123, dated 17 December 2018, was refused by notice dated 7 February 2019.
  - The application was made under section 192(1)(b) of the 1990 Act as amended.
  - The development for which a certificate of lawful use or development is sought is an outbuilding – Use Class C3 (Dwellinghouses)<sup>1</sup>.
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### **Formal 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.

### **Main Issue**

2. For the avoidance of doubt, the planning merits of the proposed development are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
3. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

### **Reasons**

4. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The applicant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided his evidence alone is sufficiently precise and unambiguous.
5. The appeal relates to a semi-detached property in residential use. The application was seeking to establish that the erection of a single-storey outbuilding within the rear garden, for use as a playroom and storage, would be lawful, had it been instituted on the date of the application.

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<sup>1</sup> This refers to Class C3 of the Town and Country Planning (Use Classes) Order 1987.

6. The appellant's case is that the development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse* is permitted development subject to conditions and limitations. The dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.
7. E.4 says that *for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse*. The Technical Guidance<sup>2</sup> advises the rules also allow, subject to the conditions and limitations, *a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen*.
8. The essential feature of an incidental use is that it should have a functional relationship with the primary use, and the relationship should be one that is normally found. Where a building within the curtilage of a dwellinghouse would contain primary living accommodation, such as bedrooms or a kitchen, it would not normally be considered to be in incidental use.
9. In this case, the outbuilding is not intended for primary living accommodation, however, the Council considers the size of the building would be too large for it to be purely incidental. The Court in *Emin*<sup>3</sup> confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
10. The appellant has provided plans to show how the outbuilding would be used. It is explained that the storage space would be mainly used as a play room and has been designed to accommodate a golf simulator and a pool table. It is also required to replace a recently demolished garage and would house bicycles, garden furniture and equipment. It is explained that the size of the house is limited and does not provide the space required for the family to live and enjoy normal domestic activities whilst also pursuing specific hobbies, such as indoor golfing.

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<sup>2</sup> Permitted Development Rights for Householders: Technical Guidance, DCLG (April 2017).

<sup>3</sup> *Emin v SSE* [1989] JPL 909.

11. The appellant's explanation of the need for a building of the scale sought, its intended use and how this would be incidental to the dwellinghouse is plausible. I am satisfied that the outbuilding would be genuinely and reasonably required for the activities described.
12. The appellant's evidence is precise and non-ambiguous. Overall, the totality of the evidence presented in support of the appellant's claim shows that, on the balance of probability, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

### **Conclusion**

13. 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 an outbuilding – Use Class C3 (Dwellinghouses) 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.

*Debbie Moore*

Inspector



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## 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

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**IT IS HEREBY CERTIFIED** that on 17 December 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The totality of the evidence presented in support of the appellant's claim shows that, on the balance of probability, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

*Debbie Moore*

Inspector

Date 12 November 2019

Reference: APP/M0655/X/19/3225116

### **First Schedule**

Outbuilding – Use Class C3 (Dwellinghouses)

### **Second Schedule**

Land at 150 Knutsford Road, Grappenhall and Thelwall, Warrington WA4 2PW

## 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.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 12 November 2019

**By Debbie Moore BSc (HONS), MCD, MRTPI, PGDip**

**Land at: 150 Knutsford Road, Grappenhall and Thelwall, Warrington WA4 2PW**

**Reference: APP/M0655/X/19/3225116**

Scale: NTS

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