
Appeal Decision

Site visit made on 17 February 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 26 March 2020

Appeal Ref: APP/Q4625/X/19/3233731
9 Coventry Road, Solihull B26 3QS

- 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 Peter Haynes against the decision of Solihull Metropolitan Borough Council.
 - The application Ref PL/2019/01269/CLOPUD, dated 7 May 2019, was refused by notice dated 1 July 2019.
 - 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 the erection of a garden hobby room and store.
-

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.

Application for costs

2. An application for costs was made by Mr Peter Haynes against Solihull Metropolitan Borough Council. This application is the subject of a separate decision.

Procedural Matters and Background

3. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. In that context the decision maker needs to ask: if this proposed operation had commenced, on the application date, would it have been lawful for planning purposes?
4. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.
5. At the site visit, I observed that a detached building of a similar design and in a similar position to that proposed was partially constructed on the site. A

planning application¹ for a garden hobby room and store was refused by the Council in 2018 and an appeal² against that refusal was dismissed in 2019 (the 2019 appeal). The building that was subject to that planning application appears to be that partially constructed on the site.

6. The proposed building would not be as tall, it would be 4 metres in height, and its length would be 13.5 metres rather than 16.5 metres. I have dealt with the appeal on this basis.

Main Issue

7. The main issue is whether the Council's decision to refuse the grant of an LDC was well-founded.

Reasons

8. The appeal property comprises a semi-detached dwelling that is used in part to provide ancillary bed and breakfast accommodation. It occupies a substantial plot with a long rear garden and there are a number of other outbuildings in that garden.
9. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for development within the curtilage of a dwellinghouse. Class E(a) of Part 1 allows for the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure (Class E).
10. The appellant seeks to establish that the building would be granted permission by virtue of Class E. There is no dispute between the parties that the development falls to be considered under Class E. Nor is there any dispute that the development would adhere to the limitations under Class E set out at paragraph E.1.
11. Nonetheless, the Council refused the application on the grounds that having regard to the stated uses of the proposed outbuilding, it is not considered that the proposal, due to its excessive size and scale, is reasonably required for purposes incidental to the enjoyment of the property as a dwelling house.
12. An incidental use is one that has a normal functional relationship with a primary use. For a building to be '*required for a purpose incidental to the enjoyment of the dwellinghouse*', the appellant must show that it is '*reasonably required*'. Whether a building is '*reasonably required*' cannot rest solely on the unrestrained whim of the householder, but equally does not need to be anything other than sensibly related to their enjoyment of the dwelling. Size and scale are factors to be taken into account, but they are not determinative.
13. 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. In this case, there is no evidence to indicate that the outbuilding would contain primary living accommodation.

¹ Ref No: PL/2018/02459/MINFHO

² Ref No: APP/Q4625/D/19/3220252

14. The building would undoubtedly be large in terms of its footprint with a floor area of around 98 square metres. I acknowledge that the Inspector, in the 2019 appeal, stated that the building proposed would be a disproportionate addition over and above the size of the original building when considered with the floorspace and volume of earlier extensions on the dwelling. However, this was in the context of assessing the planning merits of the scheme before him.
15. I also note that he stated that *'I share the Council's concern about the inability of the dwelling being able to accommodate a small home office given that the dwelling is lived in by a single occupant. However, none of the other proposed uses are unreasonable or excessive and would be incidental to the enjoyment of the dwelling house.'* Nevertheless, this was in the context of assessing whether there was a fallback position in relation to the proposal before him. The appellant has explained that the proposed building that is before me has been reduced in size to delete the area allocated for a home office in the previous proposal.
16. The building is shown to be divided internally to provide 2 rooms one is annotated to be a workshop/hobby room and the other garden machinery and store. An indicative plan has also been submitted with regard to the nature and scale of the items/furniture to be stored/utilised and the proposed uses of that space.
17. The Council questions the size of the spaces that are indicated for a number of the items/activities and the logic of the internal layout of the building. The size of the items shown on that indicative plan appears to be generous and having to go through the storage room to access the hobby room may not be efficient. Nevertheless, the appellant has set out that the building would be used for garden equipment storage, a workshop and hobby room, a potting area, to house a chest freezer, sit on mower and trailer and for domestic storage.
18. I acknowledge that a number of the pieces of equipment cited above and the storage of domestic items, garden tools and furniture are currently within the existing outbuildings. Furthermore, the demolition of those existing outbuildings cannot form part of the case before me. However, I noted at the site visit that one of the larger outbuildings does not provide secure storage as it has an open side and the timber posts supporting it are in a poor state of repair. Moreover, other outbuildings are also in a state of disrepair and one has very limited headroom. It is reasonable to consider that given the restrictions of those buildings and their state of repair that the proposal would replace them.
19. In addition, I noted that there are a large amount of garden and general DIY/wood working tools stored in those outbuildings. The appellant has also provided a photograph of a lathe that he currently stores off site. As such, it is reasonable to consider that the appellant would utilise a workshop/hobby room. Moreover, the property benefits from a substantial rear garden a significant proportion of which would remain as landscaped amenity space.
20. Even though, the building would have 7 windows it is not uncommon to have windows in outbuildings even ones that are used for secure storage and I have no reason to doubt the appellant's concern for securing the safety of expensive equipment.

21. It is explained that even though the appellant currently lives in the house on his own there is bed and breakfast accommodation within the dwelling that restricts the available space for storage. I was able to observe the facilities available for the bed and breakfast accommodation at the site visit. The appellant's explanation of the need for a building of the size and 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.
22. As such, in this case I consider there to be sufficient detail to determine that the proposed development is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Overall, the totality of the evidence before me 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. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 Schedule 2 Part 1 Class E of the GPDO.
23. This finding would not prevent the Council from exercising its powers of enforcement if the appellant proceeds to construct the proposed building not in accordance with the submitted plans, or to construct it for a different purpose, or if the building is subject to a future material change of use.

Conclusion

24. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the erection of a garden hobby room and store 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.

D. Boffin

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 7 May 2019 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 operations are permitted under the provisions of Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

D. Boffin

Inspector

Date: 26 March 2020

Reference: APP/Q4625/X/19/3233731

First Schedule

The erection of a garden hobby room and store, as shown on drawing number 2018.2543.001.A.

Second Schedule

Land at 9 Coventry Road, Solihull B26 3QS

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 March 2020

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

Land at: 9 Coventry Road, Solihull B26 3QS

Reference: APP/Q4625/X/19/3233731

Scale: not to scale



Promapv2
LANDMARK INFORMATION

Ordnance Survey © Crown Copyright 2019. All Rights Reserved.
Licence number: 100022432
Plotted Scale - 1:1250. Paper Size - A4