

Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

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

Decision date: 05 May 2020

Appeal Ref: APP/M0655/X/19/3240119

27 Weaste Lane, Thelwall, Warrington WA4 3JR

- 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 Ms Patricia Murray against the decision of Warrington Borough Council.
 - The application Ref 2018/33462, dated 1 August 2018, was refused by notice dated 8 November 2018.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The development for which an LDC is sought is a proposed cabin/summerhouse.
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Decision

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

Preliminary Matter

2. Travel restrictions are, at this time, in place due to the COVID-19 pandemic. However, a decision can be reached based on the information submitted by the main parties and a site visit is not necessary. The parties were consulted and neither party indicated that this approach was not appropriate.

Reasons

3. 27 Weaste Lane is a semi-detached dwelling. In the rear garden to the dwelling is a former garage that is now used for storage. The Appellant wishes to replace this building with a cabin/summerhouse under permitted development rights afforded by Class E of Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO); which provides for the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse. The layout plan submitted with the application indicates that the building would be an office/gym but would also have a shower room and a 'brew area'. The Council accepts that the building would satisfy the dimensional conditions of Class E.
4. The main issue is whether the proposed cabin/summerhouse is required for a purpose incidental to the enjoyment of the dwellinghouse.
5. Both main parties have referred to the judgement in *Emin v SSE and Mid-Sussex District Council [1989] 58 P & CR 416 (Emin)*. *Emin* established that "The term 'required' is...interpreted for the purposes of applying Class E as meaning

'reasonably required'. A Delegated Officer Report, which provides the Council's case in the absence of an appeal statement, states that "A gym is not normally part of primary living accommodation and could be considered to be incidental to the enjoyment of a dwelling house. However, in this case the plans also indicate a shower room and a 'brew area', which it is to be assumed would be a kitchenette...No additional justification has been provided for the provision of a shower room and kitchen area within the building and it is not clear why the main house cannot be used for these uses. It is therefore considered that this building would be used in part for ancillary living accommodation and not a building required entirely for a purpose incidental to the enjoyment of the main dwelling".

6. The Appellant's appeal statement, which the Council had not seen at the time of their determination of the application, provides additional information and justification for the building to that which was provided in the application. The Appellant works from home and now that her father lives with her, and occupies a ground floor room that was formerly her home office, she needs space in which to work and meet with business visitors. She also needs a gym which the Council accepts can be "...considered to be incidental to the enjoyment of the dwelling house". This is why the ancillary building would be an office/gym. It would be no larger than is reasonably required to accommodate these uses and the gym equipment referred to in the appeal statement. Furthermore, it is not unreasonable for the building to have a shower room and a 'brew area' given its principal uses. With regard to the 'brew area' the layout drawing does not indicate that there would be any kitchen appliances and the Council were wrong to assume that the building would have a kitchenette or kitchen area.

7. Taking into account information provided in the Appellant's appeal statement the proposed cabin/summerhouse is reasonably required, and would be used, for purposes incidental to the enjoyment of the dwelling house. For these reasons the Council's refusal to grant an LDC for a proposed cabin/summerhouse at 27 Weaste Lane, Thelwall, Warrington was not well-founded and the appeal thus succeeds. The powers transferred under section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 1 August 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, 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 proposed cabin/summerhouse is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

Signed

John Braithwaite

Inspector

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First Schedule

Proposed cabin/summerhouse

Second Schedule

Land at 27 Weaste Lane, Thelwall, Warrington WA4 3JR

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, was 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 05 May 2020

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Scale: not to scale

