



Appeal Decision

by P H Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 July 2020

Appeal Ref: APP/B0230/X/19/3240018
78 Dordans Road, Luton LU4 9BT

- 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 Humair Ahmed against the decision of Luton Council.
 - The application Ref 19/00973/LAWP, dated 16 July 2019, was refused by notice dated 11 September 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 an outbuilding.
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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.

Procedural matter

2. In view of the need to minimise social contact during the Covid-19 pandemic, I sought the views of both parties as to whether this appeal could be decided without a site visit. Both parties considered that it could be. Having regard to the nature of the proposal and the cases of the parties, I shared that view. Accordingly, I decided the appeal on the basis of the submitted information without visiting the site.

Main Issue

3. The main issue is whether the Council's refusal to grant an LDC is well founded. This will turn on whether the proposed building would be for a purpose incidental to the enjoyment of the dwellinghouse as such, so benefitting from the provisions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2019 (the GPDO).

Reasons

4. Class E permits the provision within the curtilage of the dwellinghouse of:
 - (a) *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.*

5. Class E includes various restrictions, mainly concerned with the size of the building, but it is common ground that the proposed building would accord with these. The dispute centres on the question of whether the building would be genuinely required for purposes incidental to the enjoyment of the dwellinghouse as such. If not, it cannot be permitted under Class E.
6. The Government's *Permitted development for householders - Technical Guidance* assists in the interpretation of the GPDO. In relation to Class E it advises that the rules allow a wide range of buildings as long as they can properly be described as having a purpose incidental to the enjoyment of the house. It explains that a purpose incidental to a house would not cover 'normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen'.
7. Whether or not a building is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such' is a matter of planning judgement, based on the specifics of the particular case. In this case the drawings submitted with the application show that the building would have a 'hallway' giving access to 3 rooms, labelled 'home cinema', 'gym' and 'storage'. In principle, these may be regarded as purposes incidental to the enjoyment of the house.
8. However, to be incidental also implies a degree of subordination and it is therefore necessary to consider whether, as a matter of fact and degree, the scale of the building is reasonably related to the use the appellant claims, in its domestic context. The proposed building would be large for an outbuilding, with a footprint of about 75m². Nevertheless, as a single storey building it would be smaller than the house in terms of volume and overall floorspace and would be subordinate in my judgement. Moreover, the size of the individual rooms of the building would not be excessive for the uses the appellant claims. Used in that way, the building would be reasonably related to the primary residential use of the dwelling.
9. The Council is concerned that the building could be used as a separate dwelling in the future and suggests that a separate access to the building could be gained from Bodmin Road to the rear to facilitate this. This is an understandable concern, having regard to the characteristics of the building and its siting. However, I have no evidence to show that the building would be unsuited to the purposes the appellant claims. Moreover, use as a separate dwelling would require planning permission and thus the merits of such use would fall to be considered by the Council. Accordingly, the certificate should not be withheld for that reason.
10. For the reasons given above I find that the building proposed could be reasonably used as indicated by the appellant. Used in that way it would be incidental to the enjoyment of the dwellinghouse as such. Accordingly, the provisions of Class E apply. I therefore conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of an outbuilding is not well-founded and that the appeal should succeed. I will therefore exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Peter Willows 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 16 July 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 proposed building would have been development permitted by Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Peter Willows

Inspector

Date: 9 July 2020

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First Schedule

Erection of an outbuilding

Second Schedule

Land at 78 Dordans Road, Luton LU4 9BT

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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 9 July 2020

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Scale: Not to scale

