
Appeal Decision

Site visit made on 16 March 2021

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

an Inspector appointed by the Secretary of State

Decision date: 26 April 2021

Appeal Ref: APP/C1950/X/20/3260328

Clematis Cottage, Ayot Little Green Lane, Ayot St. Peter, Welwyn AL6 9BD

- 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 Andrew Swan and Mrs Karen Swan against the decision of Welwyn Hatfield Borough Council.
 - The application Ref 6/2020/1084/LAWP, dated 13 May 2020, was refused by notice dated 9 July 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
 - The development for which a certificate of lawful use or development is sought is the erection of 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 Matters

2. The description of the development in the banner heading above is taken from the Council's decision notice as it more succinctly describes the development compared to the appellant's description on the application form. It is also the same description the appellant has used on the appeal form and in doing so he has agreed to the Council's description.
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.

Main Issue

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

Reasons

6. The appeal property comprises a detached dwelling in spacious grounds. There are a number of detached outbuildings and a tennis court/multi-purpose sports play area within those grounds. The proposal involves erecting a freestanding single storey outbuilding, situated on an area laid to lawn approximately north of the tennis court and it would be around 50 metres from the dwelling. The outbuilding would contain a sauna, hot tub, spa shower, WC and shower, home gym, together with a room including a snooker table/table tennis play area and seating area.
7. 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).
8. 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. What is at issue is whether the proposal would be for a purpose incidental to the enjoyment of the dwellinghouse as such, and whether the development would be reasonably required for that use.
9. Whilst the outbuilding would contain a WC and showers, I am satisfied that these facilities would be ancillary to the leisure uses of this building and the adjacent tennis court, particularly given the distance from the main dwelling. It is not unreasonable to regard the undertaking of exercise, sporting pursuits and undertaking more passive activity like enjoying a sauna or sitting in a hot tub, as falling within the wide range of day-to-day domestic leisure and recreational activities that occupants of a dwelling might participate in.
10. Moreover, there is no dispute that the proposed uses are ones which, in principle, could be considered as incidental to the enjoyment of the dwellinghouse. However, the Council considers that it has not been made clear why all of the intended uses need to be provided in the proposed outbuilding and cannot be accommodated, at least in part, within the existing converted outbuilding or the existing dwelling. The Council also considers that the size of the outbuilding is significant compared to that of the dwelling.
11. Case law¹ has established that it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. It also established that whilst the size of the building may be an important consideration when determining if a building is to be used incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive.

¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

12. Dealing firstly with the size, the footprint of the outbuilding would be relatively large, and it would cover a significant portion of the lawned northernmost area of the garden. However, the footprint of it would not exceed that of the dwelling and that dwelling has the benefit of a generous curtilage. Within this context, the size of the proposed outbuilding alone does not lead me to conclude that its purpose would not be incidental to the enjoyment of the dwelling.
13. In addition, the evidence before me indicates how the rooms in the outbuilding would be laid out. There is also a detailed justification in respect of the size of each of the spaces in relation to their allotted use. On balance, I consider that the internal space allocated to each of the various activities is not excessive. The proposed building is of a size that, in my view, is genuinely and reasonably required to accommodate those uses.
14. Although I did not enter the dwelling, or the existing converted outbuilding, there was nothing apparent in external views, including through glazed areas, to suggest that the interior space of these buildings was not already fully utilised. Also, rooms in a traditional dwelling of this age are likely, in my experience, to have relatively restrictive floor to ceiling heights as stated by the appellant and they are unlikely to provide adequate and sufficient ventilation for some of the uses which would generate large amounts of water vapour.
15. Furthermore, the majority of the individual rooms' intended functions, as labelled are nowadays often found in newly built or converted outbuildings set aside for consolidated leisure purposes. The existing converted outbuilding does not appear large enough to provide such a consolidated function. As a result, I am satisfied that the activities for which the outbuilding is required could not reasonably be accommodated within the dwelling or the existing converted outbuilding.
16. 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.
17. 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

18. 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 the erection of an outbuilding 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.

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 13 May 2020 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, Schedule 2, Article 3 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

D. Boffin

INSPECTOR

Date: 26 April 2021

Reference: **APP/C1950/X/20/3260328**

First Schedule

The erection of outbuilding, as shown on drawing numbers LA2003251-DDS-GA-E-LPL-00001 rev 02; LA2003251-DDS-GA-P-LPS-00001 rev 03 and LA2003251-DDS-GA-P-LGG-00001 rev 02

Second Schedule

Land at Clematis Cottage, Ayot Little Green Lane, Ayot St. Peter, Welwyn AL6 9BD

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: 26 April 2021

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Scale: Not to Scale

Location Plan of AL6 9BD

