



Appeal Decision

by Stephen Hawkins MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 28 May 2021

Appeal Ref: APP/W0340/X/20/3264896

5 Damson Drive, Mortimer, Reading RG7 3WZ

- 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 Marian Tudorana against the decision of West Berkshire Council.
- The application Ref 20/02626/CERTP, dated 9 November 2020, was refused by notice dated 9 December 2020.
- 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 described as: *"planning for an outdoor sauna to be installed in the garden for family recreational use and having building size with approved permitted development rights. Dimensions 2.1m depth, 3 m length, max height 2.1m, total 6.3 sqm usage out of existing 50 sqm garden space."*

Summary of Decision: The appeal is dismissed.

Preliminary Matters

1. The description in the banner heading above is taken from the application form. It is clear from the plans accompanying the application that the proposal is for a residential outbuilding. The Council dealt with the application on a similar basis.
2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.
3. On the application form, the box was ticked to state that work on the outbuilding had already started. Photographs supplied by the appellant show that the outbuilding has been erected. Even so, the relevant date for determining the lawfulness of erecting the outbuilding is that on which the application was made. On the appeal form, the appellant stated that the outbuilding had not been started before the application. In the absence of firm evidence to indicate otherwise, in my view the application was correctly made under s192 of the Act and I shall deal with the appeal on that basis.
4. Whether an LDC should be issued is strictly a matter of fact and law; planning merits considerations are not relevant to my decision. Therefore, the effects of the outbuilding on the character and appearance of the area and the living conditions of occupiers of adjacent residential property are matters which have

no bearing on the outcome of this appeal. Also, property values are not relevant to planning.

Main Issue

5. The main issue in this appeal is whether it has been shown that the outbuilding is granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

6. The appeal concerns a modern semi-detached dwelling located on a residential estate. The drawings that accompanied the application show a detached outbuilding situated in the rear garden of the dwelling. It is for the appellant to show that an LDC should be issued in respect of the outbuilding, the relevant test of the evidence being on the balance of probability.
7. I am given to understand that the dwelling was erected pursuant to planning permission reference 02/01364/FULMAJ dated 25 February 2004, the Council having referred to permission reference 02/01365/FULMAJ in the officer report and decision notice in error. The relevant permission concerned erecting 120 dwellings and associated garages, access roads and landscaping. Several conditions were attached to the permission, the one pertinent to this appeal being condition 22 which states: *"Notwithstanding the provisions of the current Town and Country Planning General Development Order, no additions or extensions to the dwellings shall be built or ancillary buildings or structures erected within their curtilage, or material alteration made to their appearance, unless permission has been granted by the Local Planning Authority on an application made for that purpose"*.
8. There was no evidence to suggest that the relevant planning permission was not implemented or that the dwelling was erected pursuant to a different permission. A previous version of the GPDO was in force when permission was granted in 2004. However, the Courts have held that conditions removing permitted development rights under the GPDO have a continuing effect in respect of subsequent versions of that legislation¹. Therefore, the effect of condition 22 is to restrict development otherwise permitted by the GPDO unless express planning permission is obtained. I acknowledge that the National Planning Policy Framework discourages the use of such conditions unless there is clear justification. However, that refers to considerations in the granting of new planning permissions and so has no bearing on the continuing effect of condition 22. Whilst the appellant may not when acquiring the dwelling have been made aware of the condition, that also has no relevance to its continuing effect.
9. The planning permission granted by the GPDO at Article 3, Schedule 2, Part 1 for certain development within the curtilage of a dwelling includes at Class E provision of a building required for a purpose incidental to the enjoyment of the dwelling as such, subject to certain size and locational limitations. However, that permission is not absolute and is qualified by other statutory provisions. The effect of the provision in the GPDO at Article 3 (4) is that development cannot be permitted by the GPDO where it would be contrary to a condition on a grant of express planning permission. The outbuilding is an ancillary building

¹ *R v Tunbridge Wells BC ex parte Blue Boys Developments Ltd* [1990] 1 PLR 55; [1990] JPL 495.

within the curtilage of the dwelling and so falls squarely within the types of development restricted by condition 22. I was not made aware of planning permission having been granted for erecting the outbuilding following submission of a planning application. As erecting the outbuilding would in consequence be contrary to condition 22 it cannot be permitted by the GPDO Article 3, Schedule 2, Part 1, Class E, even if the relevant size and locational limitations would otherwise be met.

10. Therefore, on the balance of probability the appellant has not shown that the outbuilding is granted planning permission by the GPDO. It follows that in the absence of a grant of express planning permission following the submission of a planning application, the outbuilding would not be lawful for planning purposes.

Conclusion

11. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the outbuilding was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

12. The appeal is dismissed.

Stephen Hawkins

INSPECTOR