



Appeal Decision

Site visit made on 28 May 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 07 June 2021

Appeal Ref: APP/A0665/X/20/3264895

Grove House, Village Lane, Whitley, Northwich WA4 4EJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) 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 D Rogers against the decision of Cheshire West & Chester Council.
 - The application Ref 20/01983/LDC, dated 5 June 2020, was refused by notice dated 17 September 2020.
 - The application was made under section 192(1)(b) of the 1990 Act as amended.
 - The development for which a certificate of lawful use or development is sought is construction of outbuilding and garden walls.
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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.

Application for costs

2. An application for costs was made by Mr D Rogers against Cheshire West & Chester Council. This application is the subject of a separate Decision.

Preliminary Matter

3. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.
5. The dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.

Reasons

6. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such* is permitted development subject to conditions and limitations.
7. The single-storey building would be sited to the east of the main dwelling on land currently used for residential purposes. The building would be constructed in a U-shape enclosing a courtyard. In addition, there would be two rectangular 'folly' structures and walls surrounding a wider area of garden. The building would accommodate a cinema room with a kitchen area and washroom/WC, in addition to a gym and swimming pool/leisure area with an associated plant room and changing facilities. There would also be a garden store with an external access.
8. E.4 says that *for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse*. The Technical Guidance¹ advises the rules also allow, subject to the conditions and limitations, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house.
9. Case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a building is required for an incidental purpose will depend on a fact and degree assessment.
10. The Court in *Emin*² confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.
11. Grove House is a relatively substantial dwelling, set within large grounds. The appellant explains that the house cannot accommodate the facilities proposed, especially the home cinema which necessitates a specific layout. I also

¹ Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

understand that the swimming pool would replace an outdoor pool that has been filled in.

12. The Council is concerned that the size of the outbuilding in relation to the house is such that it would not be subordinate. As established in *Emin*, while size can form part of the assessment, it is the use that should remain subordinate. In this case, I consider that the size of the accommodation is consistent with the envisaged use and not excessive in this instance. The layout of the proposed building would be functional and all of the leisure facilities to be provided could be considered incidental to the enjoyment of the dwellinghouse. Similarly, a storeroom for garden tools and/or personal belongings could be considered an incidental use of an outbuilding and is in keeping with the appellant's proposals to enhance the garden area.
13. The cinema room needs a particular layout, with sufficient distance between the screen and the seating to be functional. A small kitchenette serving this room is proposed, alongside a washroom, which is not unreasonable. Similarly, the home gym would accommodate three pieces of equipment with a free weights area, which is a normal layout and is not excessive. The pool and leisure facilities would be of a reasonable size, and it is usual to have changing facilities and a separate WC for the use of the pool users. There is nothing in the plans presented to suggest the proposed uses would not remain subordinate.
14. I also consider the building would be appropriately sited in relation to the main house. The appellant has shown how the building would relate to the house and the enhanced garden. There is no dispute about whether the building would be within the curtilage of the dwellinghouse.
15. The Council also indicates that the outbuilding should be constructed to a lower standard. This is not a requirement. I must consider the nature and scale of the use in the context of whether it would have a purpose incidental to the enjoyment of the dwellinghouse, as opposed to its construction materials. I acknowledge the Council's concerns about future uses. However, any use as an independent dwelling would be a breach of planning control.
16. While it is not necessary for the appellant to demonstrate a requirement for the outbuilding, it must be shown to be genuinely required for a purpose incidental to the enjoyment of the dwellinghouse as such. Given the scale and the nature of the facility that would be provided, and because the layout appears to have been appropriately designed for personal use, I am satisfied that its true purpose would be as an incidental use. Overall, there is a clear justification for an additional building of the size and layout proposed, and for the purposes described.

Conclusion

17. The totality of the evidence presented in support of the appellant's claim 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 as a matter of fact and degree. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

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 an outbuilding and garden walls 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.

Debbie Moore

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 5 June 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 totality of the evidence presented in support of the appellant's claim 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 as a matter of fact and degree. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

Signed

Debbie Moore

Inspector

Date: 07 June 2021

Reference: APP/A0665/X/20/3264895

First Schedule

Construction of outbuilding and garden walls

Second Schedule

Land at Grove House, Village Lane, Whitley, Northwich WA4 4EJ

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 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: 07 June 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

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Scale: NTS

