



Appeal Decision

Site visit made on 19 October 2021

by M Madge DipTP, MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11/11/2021

Appeal Ref: APP/N4720/X/21/3277800

14 Parkside View, Meanwood, Leeds LS6 4NS

- 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 Richard Smith against the decision of Leeds City Council.
 - The application Ref 21/02559/CLP, dated 23 March 2021, was refused by notice dated 19 May 2021.
 - 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 an outbuilding to rear.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is considered to be lawful.

Preliminary matters

2. The development for which the LDC is sought is normally taken from the application form, which in this case states "*proposed home gym garden room to rear of dwelling*". The submitted plan however shows a home gym and store. Given this inconsistency in purpose of the outbuilding, I find the description "*outbuilding to rear*", found in the Council's decision and the appellant's appeal documentation, to give precision to the proposed development. I will determine the appeal on this basis.
3. The Council relies upon its delegation report. They have made no further submissions in accordance with the appeal timetable.

Reasons

4. The **main issue** is whether the Council's refusal to issue an LDC is well founded. This turns on whether the appellant can show, on the balance of probability, that the proposed operational development would benefit from express planning permission.
5. Article 3 of the GPDO¹ grants planning permission for the classes of development, described as permitted development, in Schedule 2 of that order. Class E, Part 1 of Schedule 2 permits buildings "*incidental to the enjoyment of a dwellinghouse*". There is no dispute that the proposed development would fall

¹ Town and Country Planning (General Permitted Development) Order 2015 as amended

within the relevant conditions and limitations of Class E, and I see no reason to disagree.

6. *Emin v SSE & Basildon DC [1980] JPL 407* concluded that size of the proposed building is not determinative, it is however necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse. Whether the building is genuinely and reasonably required to accommodate the use and thus achieve the purpose should therefore be shown.
7. The proposed purposes to which the outbuilding would be put are not primary residential purposes. The Council accepts that the proposed purposes of the development would be incidental to the enjoyment of the dwellinghouse. The Council however claim that the appellant has failed to demonstrate why the proposed purposes could not be accommodated in the existing outbuilding or the existing dwellinghouse. The appellant has failed to show that the outbuilding is reasonably required, in the Council's opinion.
8. While the application documentation does not clarify why the existing outbuilding or dwellinghouse could not accommodate the proposed purposes, the appeal evidence does. *Cottrell v SSE & Tonbridge and Malling BC [1982] JPL 443* found a distinction between the Council's reasons for refusing and its decision to refuse to grant an LDC. The appellant's evidence clarifying the purposes of the existing outbuilding and the dwellinghouse are therefore before me for consideration.
9. The appellant states that the existing outbuilding accommodates "*a home office, w.c., and a covered garden sitting room area*"², and I saw that to be the case. I also saw that the dwellinghouse has been the subject of single storey, two storey and dormer extensions. The appellant claims that the dwelling house is used for "*normal domestic related uses – a kitchen/dining room, sitting room, living room, utility area and integral garage on the ground floor, with 3 bedrooms and a bathroom on the first floor and a fourth bedroom in the loft space*". While I was not shown inside the dwellinghouse, the open plan kitchen/dining/living room area was visible from the rear garden, which lends credibility to the appellant's statement. I have not been provided with any evidence to show that the rest of the dwellinghouse is used for anything other than primary residential purposes.
10. The proposed development is of a size appropriate to accommodate a home gym with store. These purposes are incidental to the use of the dwellinghouse. The appellant has shown, on the balance of probability, that the development is reasonably required to accommodate these purposes.
11. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful development in respect of the outbuilding to rear 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.

M Madge

INSPECTOR

² Appellant's Appeal Statement Paragraph 4.6

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 23 March 2021 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 building operations would be granted planning permission by virtue of Article 3 of the Town and Country Planning (General Permitted Development)(England) Order 2015 as amended for development permitted under the provisions of Class E, Part 1 of Schedule 2.

Signed

M Madge
Inspector

Date

Reference: APP/N4720/X/21/3277800

First Schedule

An outbuilding to rear

Second Schedule

Land at 14 Parkside View, Meanwood, Leeds LS6 4NS

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 operation is only conclusively presumed where there has been no material change, before operations are 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:11/11/2021

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Not to Scale

