



Appeal Decision

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 30 November 2021

Appeal Ref: APP/M1595/X/21/3274483

101 Feenan Highway, Tilbury, Essex, RM18 8EX

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Ms Yasmin Allawi against the decision of the Thurrock Borough Council.
- The application Ref: 21/00375/CLOPUD, dated 5 March 2021, was refused by notice dated 30 April 2021.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is described as an outbuilding in the rear garden, for the enjoyment of the dwellinghouse.

Summary of Decision: The appeal is allowed and a certificate of lawful use or development is issued in the terms set out below in the formal decision.

Preliminary Matters

1. In order for a LDC to be granted under s192 of the Act it is necessary for the appellant to demonstrate, on the balance of probabilities, that the development would be lawful. Matters such as planning policies and the effect of the proposals on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the proposed outbuilding would benefit from the planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, referred to as "permitted development".
3. There is no disagreement that the outbuilding would comply with the size and other limitations within paragraph E.1 of Class E, and I concur with that view. The single point of dispute is whether the proposed outbuilding would meet the requirement of E(a); that it would be *"required for a purpose incidental to the enjoyment of the dwellinghouse as such"*.

Reasons

4. The total internal floor area of the outbuilding would be a little less than the 75m² indicated on the submitted drawings. It would be divided internally into three rooms providing a storage room, a study, and a gymnasium. There would be no internal access between rooms. Each room would be accessible by its own external door from the garden. The storage room and the study would be

- of equal floor area (approximately 5m x 4m) while the gymnasium would be slightly larger.
5. The judgment in *Emin*¹ established that the term “incidental” connotes an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. Also, in applying Class E the term “required” should be interpreted as “reasonably required” rather than the “unrestrained whim” of the occupier. With regard to the nature and scale of the activities to be carried on, the size of a proposed building can be a relevant factor although not conclusive by itself.
 6. Arising from *Emin* it is important to establish firstly; whether the proposed uses of the outbuilding, in the context of the planning unit, are intended to be and would remain ancillary and subordinate to the main use of the dwellinghouse, and secondly; whether the proposed outbuilding is “reasonably required” in order to accommodate those uses.
 7. Following on from the above, no kitchens, bathrooms or bedrooms are proposed which would ordinarily be classed as primary living accommodation, rather than incidental. Moreover, I am satisfied that the proposed uses of the outbuilding (domestic storage, study and gymnasium) are uses that are capable of being ordinarily incidental to the enjoyment of a dwellinghouse, and there is no argument by the Council that they would not be so. Contrary to the Council’s view, I find the size of each room for the uses proposed are of a domestic scale and reasonably required for those purposes.
 8. The position of the building close to the house would minimise the walking distance between the house and the outbuilding rooms, particularly useful during inclement weather conditions. While the overall size of the building is larger than the footprint of the dwellinghouse, that is not a determinative factor by itself. The building falls well within the 50% limit for Class E buildings at E.1(b). Overall, it would not be out of scale in the context of the rear/side garden where it would be located, or in the context of the dwellinghouse and the planning unit as a whole.
 9. The Council’s is concerned that there would be an in-filling effect on the street scene when viewed from the front, and that the building could potentially be accessed directly from the front garden. However, these are not relevant matters for me to consider.
 10. For all the above reasons I find as a matter of fact and degree that the proposed outbuilding would be Class E permitted development.

Formal Decision

11. For the reasons given above I conclude on the evidence now available that the Council’s refusal to grant a LDC in respect of the proposed outbuilding at 101 Feenan Highway, Tilbury, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act in that regard.

Thomas Shields

INSPECTOR

¹ *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416

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

IT IS HEREBY CERTIFIED that on 5 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 proposed outbuilding would have been development that benefitted from planning permission pursuant to Article 3, and Class E(a), Part 1, to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Thomas Shields

Inspector

Date: 30 November 2021

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First Schedule

Proposed outbuilding (storage, study, gymnasium).

Second Schedule

Land at 101 Feenan Highway, Tilbury, Essex, RM18 8EX.

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: 30 November 2021

by **Thomas Shields DipURP MA MRTPI**

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