



Appeal Decision

Site visit made on 25 January 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 14 February 2022

Appeal Ref: APP/B0230/X/21/3278349

35 Wetherne Link, Luton, LU4 9PE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mrs Silvija Lenortavice against the decision of Luton Borough Council.
 - The application ref 21/00517/LAWP, dated 30 March 2021, was refused by notice dated 4 June 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 a rear detached outbuilding for ancillary use to family dwellinghouse.
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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 found to be lawful.

Application for Costs

2. An application for costs was made by Mrs Silvija Lenortavice against Luton Borough Council. This application is the subject of a separate Decision.

Preliminary Matters

3. For precision, I have taken the appellant's name from the appeal form, as the application form only provides their surname.
4. A partially erected building occupies the location of the proposed development to which the LDC relates. The window opening and internal layout of the partially erected building do not accord with the details shown on Drawing No.1 entitled 'EXISTING AND PROPOSED ELEVATIONS AND FLOOR PLAN'. Furthermore, a high timber fence extends between the rear corner of the dwellinghouse and the partially erected building. Due to the presence of the high fence, the partially erected building is only accessible via a passageway leading from the front garden of the host property. For these reasons, the partially erected building is significantly different to the development for which the LDC is sought. I shall proceed on the basis of the proposed development shown on Drawing No.1 and other submitted documentation.

Reasons

5. The **main issue** is whether the Council's refusal to issue an LDC is well founded.
6. The appellant's main argument is that the proposed outbuilding would satisfy all of the physical criteria set out in Article 3, Schedule 2, Part 1, Class E of the

GPDO¹. The relevant part of Class E sets out permitted development rights, subject to the conditions and limitations in paragraphs E.1 to E.4, for the following type of development:

'The provision within the curtilage of the dwellinghouse of ... any building or enclosure ... required for a purpose incidental to the enjoyment of the dwellinghouse as such ...'

7. There is no dispute that the proposed outbuilding meets the relevant conditions and limitations, but that is not decisive. Of more significance is the first part of Class E, which is set out above.
8. The Courts have held that the word 'required' in Class E should be interpreted to mean 'reasonably required'. The words 'as such' are also important. Thus, in this type of case, the appellant should show that what is proposed is reasonably required for purposes incidental to the use of the dwellinghouse as a dwellinghouse. The onus of proof is upon the appellant and the relevant test is the balance of probability. It is therefore necessary to examine the reasons for the development being 'required' under Class E. Otherwise, the GPDO would be open to abuse by proposals involving buildings being constructed for one stated purpose and then being used for another purpose.
9. When evaluating whether a building to be erected under the provisions of Class E is reasonably required for the enjoyment of the dwellinghouse as such, matters such as personal preference are not conclusive factors. The matter does not rest solely on the unrestrained whim of the householder. An unusually large building will not necessarily be reasonably required just because a householder says it is. The appellant should show that a building of the proposed size is reasonably required, and that it has been designed with incidental uses in mind, having regard to all the circumstances. The proposed physical size of the outbuilding is not determinative, but it is a relevant consideration.
10. The host property is a modest semi-detached house, of a design and scale typical of its age. The proposed outbuilding would be quite substantial in size and Drawing No.1 shows the floor area divided into 4 rooms: storage, steam room, games room and bathroom. The appellant claims that the 5 occupants of the dwelling would use all the proposed facilities and the outbuilding is therefore for 'ancillary use'.
11. The 'existing site plan' shows that a small garden shed has been removed to make way for the proposed development. The appellant claims that the storage area would be shelved to accommodate tools, household items and gardening equipment, in addition to space for a lawn mower. The provision of a replacement storage area, of a similar scale to the removed garden shed is reasonable.
12. The size of the steam room and games room would not be excessive, having regard to the floor plan, cross section construction drawing, pool table and furniture information provided. Despite the limited size of the steam room and functional size of the games room, it is less than likely that they could be accommodated within the modest dwellinghouse without the loss of primary living accommodation.

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

13. The steam room, games room and storage are uses incidental to the use of the dwellinghouse as a dwellinghouse. A bathroom is however primary living accommodation, and the appellant claims it would '*allow freshening up before or after use of the steam room or mid game of pool*'. The need to freshen up during a game of pool would seem unlikely but freshening up after using the steam room is credible. As the outbuilding is detached from the dwellinghouse, the provision of a small bathroom, ancillary to the steam room use, is justified.
14. The appellant has demonstrated, on the balance of probability, that the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. The proposed outbuilding falls within the conditions and limitations set out in Class E and it would benefit from the planning permission granted under Article 3(1) of the GPDO.
15. 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 a rear detached outbuilding for ancillary use to family dwellinghouse was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Madge

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 30 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The building is required for purposes incidental to the enjoyment of the dwellinghouse and meets relevant conditions and limitations set out in Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

M Madge

Inspector

Date: 14 February 2022

Reference: APP/B0230/X/21/3278349

First Schedule

A rear detached outbuilding for ancillary use to family dwellinghouse

Second Schedule

Land at 35 Wetherne Link, Luton LU4 9PE

IMPORTANT NOTES – SEE OVER

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 use /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 /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: 14 February 2022

by M Madge DipTP MA MRTPI

Land at: 35 Wetherne Link, Luton, LU4 9PE

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Scale: Not to Scale

