



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/21/3284695

141 London Road, Luton LU1 3RL

- 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 Mr A Iqbal against the decision of Luton Borough Council.
- The application ref 21/00822/LAWP, dated 10 June 2021, was refused by notice dated 5 August 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 the erection of an outbuilding within a residential curtilage.

Decision

1. The appeal is dismissed.

Reasons

2. The **main issue** to consider is whether the Council's decision to refuse the LDC was well-founded.
3. The appellant's main argument is that the proposed outbuilding, shown on drawing numbers: 21/1/1, 21/1/2 Rev A and 21/1/3 Rev A 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 ...'

4. There is disagreement between the appeal parties that the proposed outbuilding would satisfy all the physical criteria in Class E. Paragraph E.1 confirms that development is not permitted by Class E if *'(h) it would include the construction or provision of a verandah, balcony or raised platform'*. Drawing number: 21/1/3 Rev A shows a *'decked verandah'* with steps and a balustrade.
5. The *Permitted Development Rights for Householders Technical Guidance* ("the TG") provides clarity in relation to E.1(h). It describes a verandah as *'a gallery, platform, or balcony, usually roofed and often partly enclosed, extending along the outside of a building at ground level'*; a balcony as *'a platform ... projecting outside an upper storey ...'*; and a raised platform as *'a platform with a height greater than 0.3 metres'*. The decked verandah shown on drawing number:

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

21/1/3 Rev A extends along the outside of the outbuilding at ground level, is partly roofed and is partly enclosed, around the swim spa. The part of the decked verandah that is not shown roofed or enclosed, is shown as having a step down to ground level. In the absence of any written measurement, there is nothing on the plan to show that the decked verandah would have a height of less than 0.3 metres. The proposed decked verandah therefore falls within the TG definition of a verandah. Even if I had found that it did not, there is no confirmation that it is not a raised platform. For these reasons, I concur with the Council that the proposed outbuilding is development not permitted by Class E.

6. It is agreed between the parties that the outbuilding would satisfy all the other physical criteria in Class E. Even if I had found that the proposed development complied with E.1(h), compliance with the physical criteria in Class E is not of itself decisive. The first part of Class E (a), set out above, has significance.
7. 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 a purpose incidental to the use of the dwellinghouse as a dwellinghouse. The onus of proof is on the appellant and the relevant legal test is on the balance of probability. Had the proposed development met all the physical criteria in Class E.1, the reasons the development is '*required*' under Class E would still need to be examined. 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.
8. 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, personal preferences 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 a building is not determinative, but it is a relevant consideration.
9. The proposed outbuilding would be quite substantial in size and drawing number: 21/1/3 Rev A shows the floor space laid out with swim spa, 12 seat cinema area, fire pit, bar, wet room with toilet and a separate toilet. Other than the toilet and wet room, the proposed uses of the building could be incidental to the use of the dwellinghouse as a dwellinghouse. While the wet room would be primary living accommodation, its inclusion could be justified given the proposed swim spa. The presented information lacks specific details to show that the design and size of the outbuilding is reasonably required for these activities. Similarly, there are no details as to why these facilities need to be provided in a separate outbuilding.
10. The written annotation on drawing number: 21/1/3 Rev A describes the main section of the building as '*office/play area/cinema area*', which could be interpreted as meaning that any single one of these uses or all three or a combination of any two is proposed, which is imprecise. Apart from the vagueness of the claimed intended use, merely making an application for an

LDC stating a proposed use does not provide a case that what is proposed is or would be reasonably required.

11. Even if all the physical criteria of Class E had been met, no evidence is provided upon which I could base a finding that a building of this size and for the purposes identified is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse at 141 London Road as a dwellinghouse. On the balance of probability and the evidence available, I find that the proposed outbuilding would not be lawful under Article 3, Schedule 2, Part 1, Class E of the GPDO.

Conclusion

12. For the reasons given above and having considered all other matters, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the erection of an outbuilding within a residential curtilage 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.

M Madge

INSPECTOR