



Appeal Decisions

No site visit made

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 9 May 2022

Appeal Ref: APP/B0230/X/21/3289726

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 21/01427/LAWP, dated 12 October 2021, was refused by notice dated 7 December 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 allowed.

Preliminary matter

2. A previous application¹ for an LDC for the proposed building, including a decked verandah, was refused by the Council and subsequently dismissed at appeal² on 14 February 2022. The site visit for that appeal took place on 25 January 2022. Given the limited time that has elapsed between the 2 appeals being considered, the appeal parties agreed that there was no need to carry out a further site visit.

Reasons

3. The **main issue** to consider is whether the Council's decision to refuse the LDC was well-founded.
4. The appellant's main argument is that the proposed outbuilding, which is shown on drawing numbers: 21/1/2 Rev A and 21/1/3 Rev B, would satisfy all of the physical criteria 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 ("the GPDO"). The relevant part of Class E sets out permitted development rights, subject to conditions and limitations set out 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 ...'

¹ 21/00822/LAWP

² APP/B0230/X/21/3284695

5. The appeal parties agree that the outbuilding would satisfy the physical criteria in Class E, but that is not decisive. Of more significance is the first part of Class E (a), which is set out above.
6. 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 or purposes incidental to the use of the dwellinghouse as a dwellinghouse. The onus of proof is on the appellant and the relevant legal test is the balance of probability. It is therefore appropriate to examine the reasons development is '*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.
7. When evaluating whether a building 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 and it is for the appellant to show that a building of the proposed size is reasonably required, and that it is 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.
8. The proposed outbuilding would be quite substantial in size and drawing number: 21/1/3 Rev B shows the floor space laid out with swim spa, 12 seat cinema area, fire pit, bar, wet room with toilet and separate toilet. The proposed uses of the building could be incidental to the use of the dwellinghouse as a dwellinghouse. The wet room and toilet would be primary living accommodation, their inclusion is however justified given the proposed swim spa, bar and the separation distance between the proposed building and the dwellinghouse. The presented information provides details of the appellant's personal circumstances, including a need to be able to facilitate large gatherings of family and friends for leisure and cultural purposes. The design and size of the outbuilding has therefore been shown to be reasonably required for the specified activities. Confirmation is also given that there is no equivalent space in the dwellinghouse.
9. The appellant has therefore shown that the proposed outbuilding is reasonably required for purposes 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 outbuilding would be lawful under Class E of the GPDO.

Conclusion

10. 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 not well-founded and that the appeals A and B 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 10 June 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black 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 outbuilding 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: 9 May 2022

Reference: APP/B0230/X/21/3289726

First Schedule

Erection of an outbuilding within a residential curtilage.

Second Schedule

Land at 141 London Road, Luton, LU1 3RL

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: 9 May 2022

by M Madge DIPTP MA MRTPI

Land at: 141 London Road, Luton LU1 3RL

Reference: APP/B0230/X/21/3289726

Scale: Not to Scale

