



Appeal Decision

Site visit made on 24 May 2022

by **M Madge DIPTP MA MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 6 June 2022

Appeal Ref: APP/R4408/X/21/3288717

Gransden House, Church Street, Royston, Barnsley S71 4QZ

- 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 J Moston against the decision of Barnsley Metropolitan Borough Council.
- The application ref 2021/1221, dated 3 September 2021, was refused by notice dated 12 November 2021.
- The application was made under section 191(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 a detached outbuilding.

Decision

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

Preliminary Matters

2. Foundation trenches for a building have been dug. I noted that the position, dimensions, and layout of the foundations correspond to those shown on Drawing No. DWG 001 Rev C submitted with the previous application for an LDC, which was subsequently dismissed on appeal¹. The current proposal is shown on Drawing No. DWG-001 Rev D, this shows the outbuilding to have a reduced footprint. While the reduction in footprint means that part of the foundation trench is in the wrong place, the remainder is correct. I therefore consider that, as a matter of fact and degree, a material start has been made on the development for the purposes of s56 of the Town and Country Planning Act 1990 as amended ('the 1990 Act'). The application has therefore been made correctly under section 191(1)(b) of the 1990 Act.

Reasons

3. The **main issue** to consider is whether the Council's decision to refuse the LDC was well-founded.
4. The relevant part of Class E sets out the 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...'

¹ APP/R4408/X/20/3263972

5. 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.
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 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 being used for another purpose.
7. 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.
8. The host property is a larger than average semi-detached house set in a larger than average plot. The dwelling is set well back from the road and its private garden is located to the side and rear of the dwelling, behind a high stone wall with an electric vehicular access gate. The premises benefits from having a detached double garage within the private garden and the proposed outbuilding would be located behind that garage, adjacent to the side boundary and facing into the garden.
9. The proposed outbuilding is shown to be divided into 4 rooms. I accept that a gym and yoga area can be regarded as incidental to the enjoyment of the dwellinghouse as such. The wet room is a facility that would normally be found in a dwellinghouse and therefore identified as habitable accommodation. However, when exercising, it is not uncommon to want to shower afterwards. Given the distance from the outbuilding to the dwellinghouse, the provision of the wet room, as a matter of fact and degree, would be ancillary to the use of the gym and yoga area. Given the size of the wet room, it is clearly not intended to be a main use to which the outbuilding would be put. It is also less than likely that anyone residing in the dwelling would use the wet room as a primary bathing facility. I therefore find that the wet room is ancillary to the incidental use of the outbuilding as a gym and yoga area. I also have no concerns regarding the incidental nature of the storage and garden storage areas.
10. The gym and yoga area would be served by bi-fold glazed doors and 2 roof lights, the storage room would have a single window and the garden storage room would also be served by bi-fold glazed doors. The appellant advises that the double garage is used solely for the parking of cars, and I agree that the proposed storage areas are not excessive in proportion to the size of the dwelling. It is also of note that the size of the outbuilding has been reduced in

response to the deletion of the seating area that the previous Inspector found to be habitable accommodation. The provision of glass doors to a garden storage area may be uncommon. However, they would not be visible from any public vantage point and the Council has not shown that the property would be particularly vulnerable to burglaries. The security of the building therefore remains a matter for the appellant.

11. The appellant has therefore shown that the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse at Gransden House 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

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 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 191
(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 3 September 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, was lawful within the meaning of section 191(2) 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: 6 June 2022

Reference: APP/R4408/X/21/3288717

First Schedule

Erection of a detached outbuilding.

Second Schedule

Land at Gransden House, Church Street, Royston, BARNSELY S71 4QZ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 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 was 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 6 June 2022

by M Madge DIPTP MA MRTPI

Land at: Gransden House Church Street, Royston, BARNSELY S71 4QZ

Reference: APP/R4408/X/21/3288717

Scale: Not to Scale

