The Planning Inspectorate

Appeal Decision

Site visit made on 7 June 2022

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30 June 2022

Appeal Ref: APP/Q4625/X/22/3291184
Durban Cottage, Lodge Green Lane, Meriden, Solihull, W Mids CV7 7JG

- 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 Tom Farrell against the decision of Solihull Metropolitan Borough Council.
- The application ref PL/2021/01933/CLOPUD, dated 16 July 2021, was refused by notice dated 18 October 2021.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the 1990 Act).
- The development for which a certificate of lawful use or development is sought is the erection of an ancillary building in the rear garden.

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

Preliminary matters

2. Section 192(2) of the 1990 Act indicates that if, on an application under that section, the council is provided with information satisfying it that the use or operations described in the application would be lawful, if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.

3. For the avoidance of doubt, the planning merits of the matters applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

4. Planning Practice Guidance is clear that the applicant is responsible for providing sufficient information to support an LDC application. The burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

Main Issue

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposal would constitute permitted development by virtue of the provisions of Article 3(1) and Class E(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).

Reasons

6. Durban Cottage is a three bedroom detached traditional stone property in a rural setting. Adjacent to the side of the dwellinghouse is a detached building that accommodates a bedroom and bathroom separate from the house. To the rear of the dwellinghouse is a detached garage which, at the time of my visit, housed a car and provided storage for household/garden items. Both are located close to the host property.

7. The development proposed is a detached building that would occupy a position to the rear of the detached bedroom and bathroom accommodation building. It would be located within the garden area and would have a floor area of 120sqm. Application plan No. 9079-04 dated Sept 2020 shows the building would provide space for a cinema room which would have internal access to a games room which also provides a small space for a toilet. These two rooms would have bi-fold doors to the garden. A garden store would form part of the building but would only be accessible from the garden. The plans do not show any additional primary living accommodation.

8. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the personal enjoyment of the dwellinghouse as such, subject to the limitations set out at Classes E.1, E.2 and E.3. The council is satisfied that the proposed building complies with these limitations, and I see no reason to take a different view.

9. The area of dispute is whether the proposed building is required for a purpose incidental to the enjoyment of the dwellinghouse as such. The council's reason for its decision not to issue the certificate is that the proposed building would be too large to be seen as an incidental building to Durban Cottage and therefore it would not constitute permitted development. This reference to the term 'incidental' connotates an element of subordination by reason of its scale not being subordinate to the main dwellinghouse. Furthermore, there are other buildings within the site in addition to the dwellinghouse, which together provide a substantial amount of floor space and are used for a purpose incidental to the enjoyment of the dwellinghouse. Overall, the council considers that the proposal provides no justification for the need of the additional space.

10. Accordingly, consideration of this appeal raises two questions: is the purpose of the proposed building incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed building reasonably required for that purpose.

11. Whilst there is no statutory definition of 'incidental' in the GPDO, an incidental use is one which is functionally related to the primary use of the planning unit, which in this case is residential. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. The established principle is that the relationship should be one that is normally found.

12. Whether a building is required for an incidental purpose will depend on a fact and degree assessment. The physical size of the building in comparison to the

dwellinghouse might be part of that assessment, but that by itself is not conclusive. The GPDO sets no requirement that any Class E building is 'subordinate' in size to the dwellinghouse. However, the word 'incidental' implies an element of subordination in 'land use terms' in relation to the enjoyment of the dwellinghouse itself.

13. For a building to be 'required for a purpose incidental to the enjoyment of the dwellinghouse', the Courts have interpreted 'required' as meaning 'reasonably required'. In the context of Class E this translates as reasonably needed for that purpose. The appellant does not need to somehow prove that the building would be 'necessary'. However, whether a building is 'reasonably required' cannot rest solely on the unrestrained whim of the householder, but equally does not need to be anything other than sensibly related to their enjoyment of the dwellinghouse. Judgement as to whether such a building would be reasonably required is a matter of objective fact and degree.

14. At my site visit, I saw that the ground floor of the dwellinghouse provided three main rooms – a kitchen, sitting room and dining room. The rooms were all formally laid out and provided comfortable modest accommodation. I note that amongst the reasons for needing the additional space, is the wish to provide space for up to 5 grandchildren when they visit. Alongside this, the appellant submits that they would use the building as entertainment space for family and friends. The garden store would provide an area for storage of garden maintenance equipment and garden furniture over the winter months and would allow the garage space to accommodate the appellant's cars, which are said to include a classic car.

15. The appellant provides that the games room has been designed to accommodate a full size snooker table. Except for the floor plans provided, there is no further information about the cinema room. However, it will likely be equipped with a large screen and seating to accommodate several people with sufficient distance between the screen and seating to be functional. Clearly, from my site observations, this form of entertainment space could not be provided within the house. Whilst I acknowledge that there are other buildings apart from the dwellinghouse, these have their own function and appeared fully utilised.

16. Although the appellant's submissions are brief, I consider that the size of the internal space allocated to each of the various activities is consistent with the envisaged use and not excessive in this instance. The proposed use of the space for garden maintenance equipment and storage, and specific entertainment purposes are uses which would be carried out as a function of the personal enjoyment of the dwellinghouse. In my view, the proposed use of the space can be regarded as being subordinate and the activities reasonably connected with the residential use of the appellant's dwelling.

17. Given what I observed on site and the submissions provided by the appellant, I am satisfied that, on the balance of probability and as a matter of fact and degree, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as such. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO. The council may have concerns about

the future use of the building, but a material change of use of the building would require planning permission and the council may take enforcement action if that eventuality occurred.

Conclusion

18. For the reasons given above I conclude that the council's refusal to grant an LDC in respect of a building in the rear garden was not well-founded and that the appeal should succeed. The appeal is allowed, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR

The Planning Inspectorate

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 16 July 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 proposed operations would have constituted permitted development within the terms of Article 3 and Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

S A Hanson
INSPECTOR

Date: 30 June 2022
Reference: APP/Q4625/X/22/3291184

First Schedule
The erection of an ancillary building in the rear garden as shown on the drawing numbers 9079-04, 9079-05, 9079-06 each dated Sept 2020

Second Schedule
Land at: Durban Cottage, Lodge Green Lane, Meriden, Solihull, W Mids CV7 7JG

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 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.

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.

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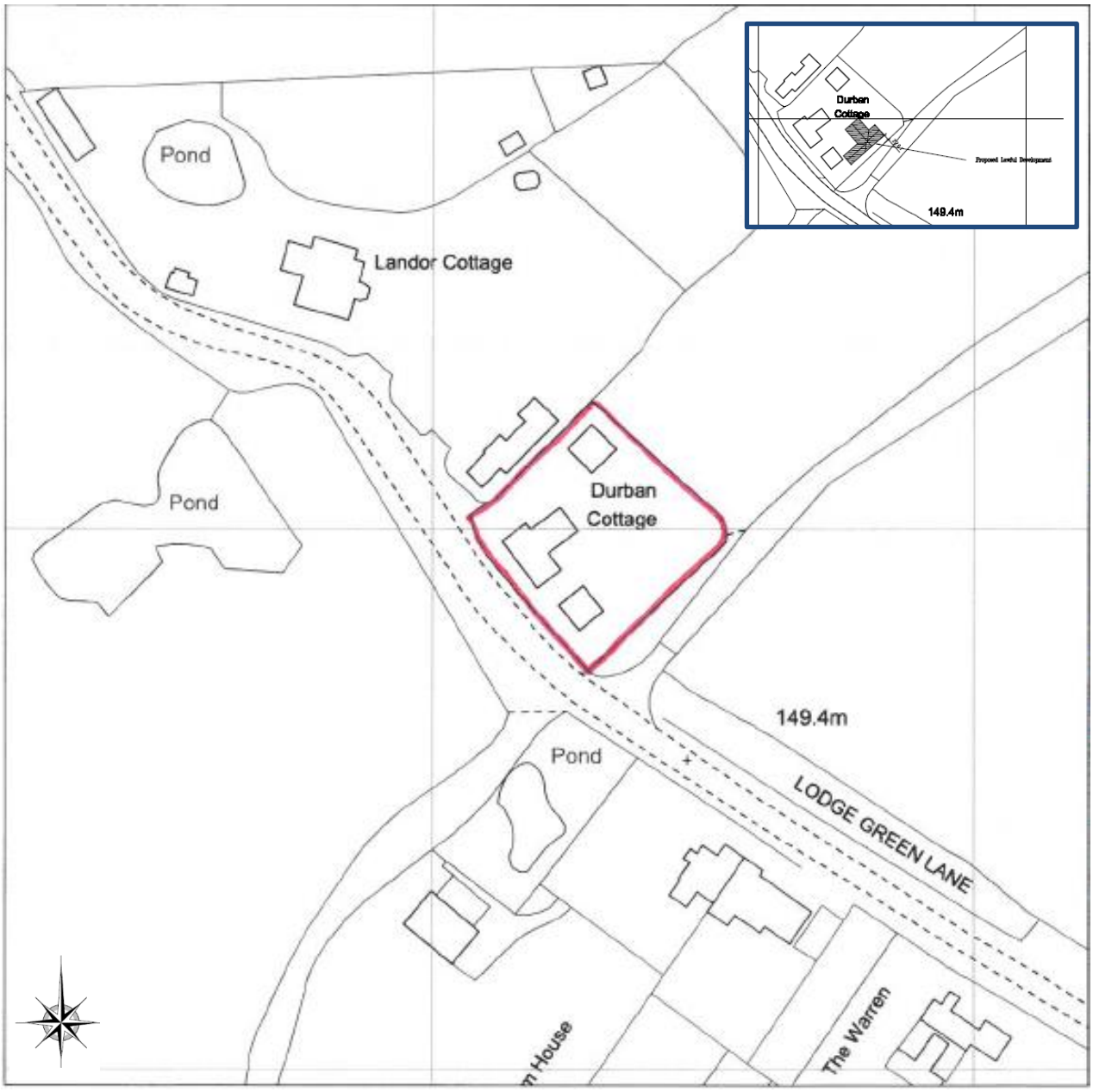
Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 June 2022

by S A Hanson BA(Hons) BTP MRTPI

Land at: Durban Cottage, Lodge Green Lane, Meriden, Solihull, W Mids CV7 7JG

Reference: APP/Q4625/X/22/3291184

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