
Appeal Decision

Accompanied site visit made on 11 August 2022

by Nick Fagan BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 23 August 2022

Appeal Ref: APP/N1730/X/22/3291813

Willow Cottage, Stroud Lane, Crookham Village, Hampshire GU51 5ST

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Chris Boddy against the decision of Hart District Council.
 - The application Ref 21/02325/LDC, dated 17 August 2021, was refused by notice dated 29 November 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 described as the erection of an ancillary garden store and workshop within residential curtilage.
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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 development which is considered to be lawful and a plan showing its proposed location within the existing curtilage of Willow Cottage.

Main Issue

2. The main issue is whether the Council's refusal to issue a certificate of lawful use for proposed development was well founded.
3. In this case that turns on whether the proposed garden store and workshop falls within Schedule 2, Part 1, Class E of the GPDO¹, specifically whether its site lies within the curtilage of the dwellinghouse.

Reasons

4. Class E of the GPDO grants planning permission for the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to ground coverage and height limitations. There is no dispute from the Council that the proposed garden store and workshop would be for a purpose incidental to the enjoyment of Willow Cottage. The height limitations of Class E would not be exceeded, nor would the ground coverage, but the Council refused to issue an LDC because it was not satisfied that the site of the proposed building would be within the curtilage of the dwelling.

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

5. The proposed location and block plan, as is accurately summarised in the appellant's final comments in responding to the Council's statement of case, shows that the proposed garden store/workshop building would be constructed in a position immediately to the east of the hedge and earth mound running south to north just to the east of the western vehicular access to the appellant's land. This hedge and mound line, which also contains several trees, is the division between the garden curtilage of Willow Cottage and the contiguous land owned by the appellant to the west, the subject of the extant planning permission for a detached 3-bedroom dwelling (LPA Ref 19/02423 dated 3 April 2020).
6. All of the land to the east of this hedge line up to the Cottage itself is laid out in flower and vegetable beds divided by lawned walkways and also containing garden statuary and topiary, as well as a larger area of lawn closer to the dwelling. The site of the proposed building itself is predominantly currently occupied by a netted bed for fruit growing. There is no doubt that all this area between the Cottage and the hedge line adjacent to the western vehicular access, including the exact site of the proposed outbuilding, is within the garden curtilage of Willow Cottage. It is the well-established garden of the dwelling and is clearly part and parcel of the plot. All this land has been owned by the appellant and previous owners of Willow Cottage dating back to at least 1957 by reference to the 'red lines' detailed on previous planning application dating back to that time, as set out in the appellant's submissions.
7. The fact that the western portion of the appellant's land ownership, the blue cross-hatched area indicated on the plans in his final comments and the site of the permitted new additional 3-bedroom house, does not appear to be within the curtilage of Willow Cottage given its separate Land Registry title and much more recent acquisition by the owners of Willow Cottage, is irrelevant to what I am looking at here. The fact that the location and site block plan, reproduced below, contains this western portion of non-curtilage land is likewise irrelevant, because all I am considering in this appeal is whether the proposed garden store/workshop would be within Willow Cottage's curtilage. For the above reasons it evidently would be.
8. For these reasons the proposed garden store/workshop, which would measure 5.9m by 9m, would be permitted lawful development under Schedule 2, Part 1, Class E of the GPDO.
9. Consequently, for the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful development for the proposed garden store/workshop was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under Section 195(2) of the 1990 Act as amended.

Nick Fagan

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 17 August 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red (or black if reproduced in black and white) 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 site of the proposed building lies within the curtilage of Willow Cottage and there is no dispute that it would be for a purpose incidental to the enjoyment of Willow Cottage. The height limitations of Schedule 2, Part 1, Class E of the GPDO would not be exceeded, nor would the ground coverage or any other of the limitations.

Signed

Nick Fagan

Inspector

Date: 23 August 2022

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First Schedule

The erection of an ancillary garden store and workshop

Second Schedule

Land at Willow Cottage, Stroud Lane, Crookham Village, Hampshire GU51 5ST

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: 23 August 2022

by **Nick Fagan BSc DipTP MRTPI**

Land at: Willow Cottage, Stroud Lane, Crookham Village, Hampshire GU51 5ST

Reference: APP/APP/N1730/X/22/3291813

Scale: 1:1250



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Metres

