



Appeal Decision

Site visit made on 23 August 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 September 2022

Appeal Ref: APP/Y3615/X/22/3295550

The Hollies, Sandy Lane, Guildford GU3 1HF

- 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 Matthew Mansell against the decision of Guildford Borough Council.
 - The application Ref 21/P/02693, dated 22 December 2021, was refused by notice dated 16 February 2022.
 - 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 outbuilding to rear of the property to be used ancillary to the use of the dwelling.
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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 operation which is found to be lawful.

Preliminary Matters

2. The site visit procedure was altered from an accompanied site visit to an access required site visit, as the Council Officer was not present when I arrived at the appeal site during the pre-arranged time and date. Both parties were subsequently written to explaining the change in procedure. As such the appeal will be determined on this basis.
3. The certificate seeks to establish whether the works would have been lawful on the date of the application. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the facts of the case, the relevant planning law and judicial authority, and its planning merits are of no relevance. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of application, be lawful.

Main Issue

4. The main issue is whether the Council's refusal to grant the LDC was well founded. It is necessary to consider whether the proposed outbuilding would be granted planning permission by Article 3, Schedule 2, Part 1, Class E of the

Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (GPDO).

Reasons

Whether incidental

5. The main dwellinghouse is a detached two-storey building situated within a substantial plot. The proposed outbuilding is single storey with pitched roof.
6. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'
7. The Council determined that owing to its excessive size, in relation to its indicated uses, the single storey outbuilding, would fall foul of the limitations and conditions of Class E of Schedule 2, Part 1 of the GPDO. The Council also state that the application fails to demonstrate that the purpose would be incidental to the dwellinghouse, and that no justification has been provided for the need for any of the proposed room uses or why these uses cannot be accommodated within the existing house. There is no dispute that in all other respects that the outbuildings would fall within the scope of Class E, and I have found no reason to disagree with these findings. The decision therefore turns on whether the building is for a purpose incidental to the enjoyment of the dwellinghouse.
8. It has been established by case law that an incidental use should be functionally related to the primary use (as a dwellinghouse). By definition, then, an incidental use cannot be one that is integral to or part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental will be a matter of fact and degree. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. The size of the building in relation to the dwelling is relevant but not a conclusive factor.
9. The outbuilding would be a substantial single storey building, divided into four separate rooms. The largest room would provide a medium sized home swimming pool with a bar area. There would also be an entrance lobby, a gym, and a shower/changing room. The leisure facilities provided would be for the use of the appellant's family.
10. Case law has established that a wide range of activities are capable of being considered incidental to the enjoyment of a dwelling. The provision of a swimming pool and bar area could reasonably serve a purpose incidental to the enjoyment of the dwellinghouse, and it is reasonable for the appellant to want some circulation and relaxation space around the pool for their family to enjoy.
11. It is not unusual to have a home gym or entrance lobby and these areas would not be excessive in size for their intended purpose. A shower room/changing area could be primary accommodation but, in this case, it would not be unreasonable to regard it as part of the incidental use with the gym and swimming pool. While the outbuilding would be large, the facilities it would provide would be reasonable in size and likely to be what is needed to achieve

their purpose. I also observed that these facilities could not be accommodated within the existing house.

12. The Council argues that the size of the outbuilding, and the areas provided for the pool, gym, and bar area, go beyond what can be considered incidental. However, for the reasons I have set out, I find that the purpose of the building would be incidental to the use of the dwellinghouse, and its size is what would reasonably be required to fulfil that purpose.
13. On the evidence before me, I therefore conclude that the building would be required for a purpose incidental to the enjoyment of the dwellinghouse and would be permitted development by virtue of Article 3, Schedule 2 Part 1 Class E of the GPDO.

Conclusion

14. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of outbuilding to rear of the property to be used ancillary to the use of the dwelling was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

R Satheesan

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 22 December 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development is "permitted development" falling within Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 for which planning permission is granted by Article 3(1) of that Order.

R Satheesan
Inspector

Date : 20 September 2022
Reference: APP/Y3615/X/22/3295550

First Schedule

The erection of outbuilding to rear of the property to be used ancillary to the use of the dwelling.

Second Schedule

Land at The Hollies, Sandy Lane, Guildford GU3 1HF

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

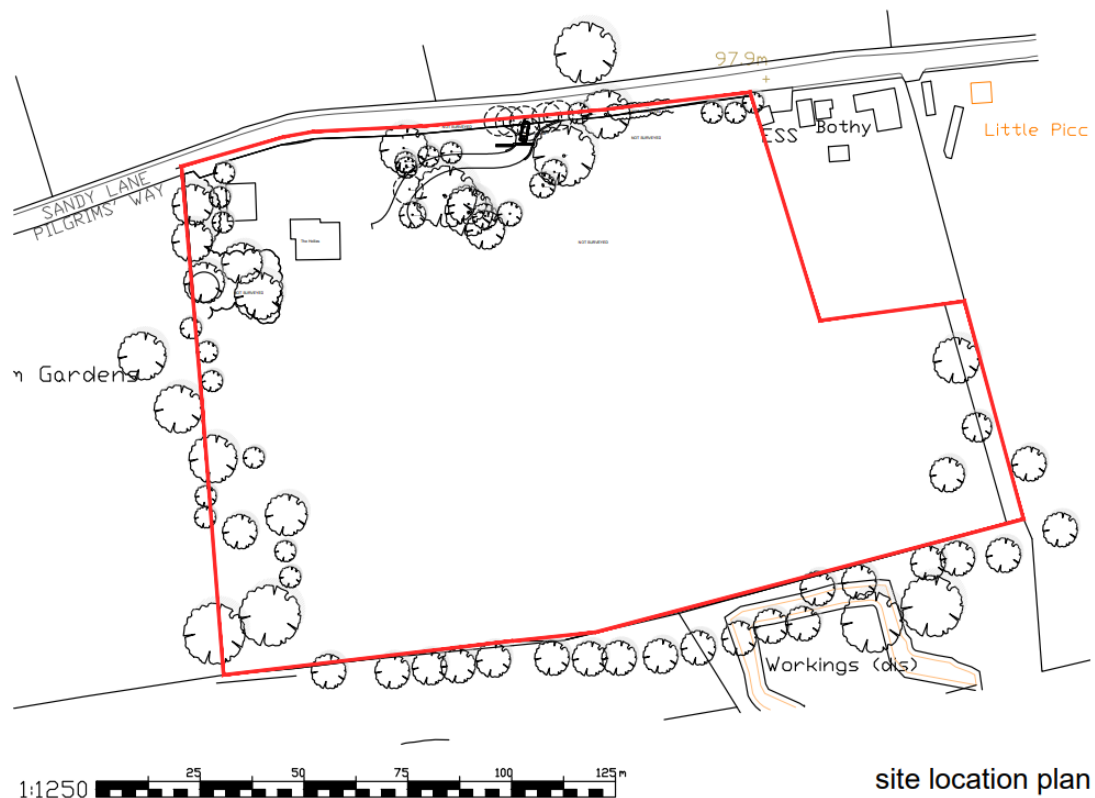
This is the plan referred to in the Lawful Development Certificate dated: 20 September 2022

by R Satheesan BSc PGCert MSc MSc MRTPI

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Not to scale.



site location plan