



Appeal Decision

Site visit made on 31 January 2023

by Richard S Jones BA(Hons), BTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 01 March 2023

Appeal Ref: APP/Y3615/X/22/3296550

Burrowsdine, Vicarage Lane, Send, GU23 7JN

- 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 & Mrs Khalek against the decision of Guildford Borough Council.
 - The application ref 21/P/01847, dated 24 August 2021, was refused by notice dated 20 October 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 construction of outbuilding to be used as a home office, gym and store, plus log store.
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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. Where an LDC is sought, the onus is on the appellant to demonstrate that the proposed development would have been lawful, on the balance of probabilities, if it had been instigated or begun on the date of the application. Planning merits form no part of the assessment of a LDC, which must be considered in the light of the facts and the law.

Main Issue

3. The main issue is whether the outbuilding would have been lawful on the basis that the development would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

Reasons

4. The appeal property comprises a detached bungalow and two outbuildings within a very large plot of land lying within the Green Belt. The bungalow and outbuildings are currently vacant and dilapidated.
5. Subject to limitations, Article 3 and Schedule 2, Part 1, Class E(a) of the GPDO grant planning permission for:

'The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'

6. It does not appear to be a matter of dispute that the outbuilding would fall within the curtilage of the dwellinghouse. For the avoidance of doubt, it would be sited close to the north western side of the dwelling on land that has an intimate association with the dwelling and can be seen to form part and parcel of it. Accordingly, the proposed outbuilding would fall within the curtilage of the dwellinghouse.
7. It is common ground that the proposal complies with the limitations set out in paragraphs E.1 and that paragraphs E.2 and E.3 of the GPDO are not applicable. I find no reason to conclude otherwise.
8. The Council's reason for refusing the application is that the proposed outbuilding, by virtue of its excessive scale in relation to its indicated use, would fail to be required for purposes incidental to the enjoyment of the dwellinghouse.
9. Both parties refer to the case of *Emin*¹ which confirmed that that regard should be had not only to the use to which the building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is also necessary to identify the purpose and incidental quality of what is proposed in relation to their enjoyment of the dwellinghouse 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.
10. The appellant explains that following a previously refused LDC the size of the outbuilding has been reduced by around 20%, so the total floor area would be approximately 65m². Although it would have a similar length to the existing dwelling, it would be about half its width and a little over half of its footprint. The property also benefits from a very large garden, the vast majority of which would remain open. Consequently, the scale of the outbuilding would not be excessive in that context.
11. Relative to the size of the plot, the existing dwelling is modest in scale and would be very unlikely to be able to accommodate the proposed uses within it. The appellant explains that the dwellinghouse benefits from LDCs for two single storey side extensions, a front porch and rear dormer window, and that a prior notification application had been submitted for a single storey 8m rear extension. Should those operations be implemented, as well as approved in the case of the latter, it is reasonable to question whether there would be greater scope to include some, or all of the uses within the main dwelling. However, the proposed floor plans show a reasonable apportion to the various rooms for a four bedroom dwelling, with no residual space for the proposed uses. Moreover, relative to such an enlarged dwelling, the outbuilding would achieve a greater degree of subordination.
12. It is further explained that the two existing outbuildings are to be demolished in accordance with the planning permission granted for a new garage. On that basis, the site would not benefit from any other buildings to be used in the manner currently proposed.

¹ *Emin v Secretary of State for the Environment and Mid-Sussex DC* (1989) 58 P&CR 416 [1989] GPL 909

13. The proposed floor plans show the use of the outbuilding for a home office, gym, store room, coat room/WC, and a log store. Before considering each aspect in turn, it is worth highlighting that the essential feature of an incidental use is that it should have a functional relationship with the primary use, and the relationship should be one that is normally found.
14. A gym is clearly capable of being a use incidental to the residential use of the main house. In this case, it is shown to take up approximately half of the main internal floorspace, accommodating five items of kit along with associated circulation space. Whilst fairly large, it is not disproportionately or unreasonably so.
15. A toilet would usually be comprised within the everyday living facilities of the dwelling, and thus be part of the primary living accommodation. Nevertheless, I can see no reason why such a facility should not be regarded as part of an incidental use if integrated within it and subservient to it, as in this case.
16. The appellant reflects that a coat room is not the most appropriate label to describe the intended use of the room adjacent to the toilet. It explained that the space would serve as changing/ kit store room for the home gym and provide a buffer to the toilet and as a further incidental storage space/ utility room. Those are reasonable, incidental purposes and, given the limited size of the room, it is subservient to the use of the gym.
17. I also accept that a home office, which is not uncommon in a garden building, particularly post COVID-19, is incidental to the ordinary use of a home. Space for two desks and a small amount of office furniture is of domestic scale and not unreasonable.
18. The appellant explains that the storeroom would accommodate the required gardening equipment to maintain the property, such as a lawnmower, power tools, and the like. That is clearly an incidental purpose and given the substantial grounds in which the dwelling sits, the size of the proposed store is reasonable, particularly given the additional requirement to store general household items such as bikes and garden furniture. The log store is also an incidental purpose and is reasonably sized.
19. On the balance of probabilities, the proposed scale of activities and size of the building are genuinely and reasonably required in order to accommodate the proposed uses which are incidental to the enjoyment of the dwellinghouse as such. The proposed development would constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the GPDO and would be granted planning permission by Article 3(1) of the same.

Conclusion

20. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a LDC 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.

Richard S Jones

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 24 August 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 operations constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended and would be granted planning permission by Article 3(1) of the same.

Signed

Richard S Jones

INSPECTOR

Date: [01 March 2023]

Reference: APP/Y3615/X/22/3296550

First Schedule

Construction of outbuilding to be used as a home office, gym and store, plus log store.

Second Schedule

Land at Burrowsdine, Vicarage Lane, Send, Woking, Surrey GU23 7JN

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 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 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.

