



Appeal Decision

No site visit was made.

by Graham Dudley BA (Hons) Arch Dip Cons AA RIBA

an Inspector appointed by the Secretary of State

Decision date: 23 March 2023

Appeal Ref: APP/B1550/X/22/3301812

10 South View Close, RAYLEIGH, Essex, SS6 7LX

- 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 BILL FITTOCK against the decision of Rochford District Council.
 - The application ref 22/00263/LDC, dated 23 March 2022, was refused by notice dated 26 May 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 a detached garden room.
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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.

Reasons

2. The applicant wishes to ascertain whether the proposed development would be permitted development within the provisions of Class E to Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) (as amended).
3. Class E of that part of the GPDO gives householders the right to undertake enlargement, improvement or other alteration to a dwellinghouse, provided that the alterations comply with a list of criteria set out under that Class. If the proposed alterations fail to comply with any one criteria of Class E the alterations would not be permitted development and planning permission would be required.
4. The Council's refusal notes that the use of an outbuilding as a garden room would normally be capable of being a purpose "incidental to the enjoyment of the dwellinghouse as such" for which an outbuilding may be required. However, the proposed floor plan includes a toilet in this garden room, which is a primary use that a dwellinghouse could accommodate. Therefore, the Council say that the proposed outbuilding would not be considered as incidental to the enjoyment of the main dwelling due to the inclusion of the toilet/bathroom.
5. Whilst the Council's analysis of the situation is generally reasonable, I do not accept the conclusion with respect to the incidental use. An overall assessment has to be made including the proposed use of the structure, considering size, which alone is not conclusive factor. This is a small structure, with external dimensions of 3.85 x 3.7m with a 2.0 x 1.45 projection for a single toilet. The

toilet does not have capacity to be made into a shower/bathroom as indicated in the reason for refusal, as it would be too small for that. There would also be limited space to add one or extend into the garden room itself.

6. The arrangement with an effectively external wc does not suggest that it is for primary accommodation associated with the house, but associated with the garden room use. Overall, I conclude that this would be an incidental use associated with the dwellinghouse. Clearly, if the garden room is used in another way not incidental to the dwellinghouse the Council can take appropriate action, as it would then not be permitted development.

Conclusion

7. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a detached garden building 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.

Graham Dudley

INSPECTOR

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 operation 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 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.

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 23 March 2022 the use/operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown 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 proposed garden room, used incidentally to the dwellinghouse, would conform with the Town and Country Planning (General Permitted Development) Order 2015 (as amended).

Signed

Graham Dudley

Inspector

Date: 23 March 2023

Reference: APP/B1550/X/22/3301812

First Schedule

Second Schedule

Land at 10 South View Close, RAYLEIGH, Essex, SS6 7LX

IMPORTANT NOTES – SEE OVER

Plan

This is the plan referred to in the Lawful Development Certificate dated: 23 March 2023

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Scale: Not to Scale

