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# Appeal Decision

by **J Moss BSc (Hons) DipTP MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 18<sup>TH</sup> APRIL 2023**

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**Appeal Ref: APP/D3640/X/21/3289756**

**Land at Meadow View, Chobham Park Lane, Chobham, Woking GU24 8HG**

- 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 J Jones against the decision of Surrey Heath Borough Council.
  - The application ref 21/0446, dated 19 April 2021, was refused by notice dated 21 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 described in the application form as: Erection of Class A side extension; Class B hip to gable extension; Class D porches; and Class E outbuilding.
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## Preliminary Matters

1. Having considered the evidence submitted, the main consideration in this case and the particular matters in dispute, I am satisfied that no injustice would be caused to any party in determining the appeal without a site visit. The views of the parties were, however, sought on this matter before my determination of the appeal.
2. Despite the description given in the application form of the development for which the LDC was sought, the Council's decision notice refers only to the proposed outbuilding. It has not, however, been suggested that the proposed alterations and extensions to the dwellinghouse were withdrawn from the scheme. My determination of the appeal will, therefore, be in respect of these elements of the proposed development, in addition to the outbuilding.
3. Notwithstanding this, as I note above, the Council's decision notice does not refer to the proposed alterations and extensions to the dwellinghouse. Neither have I been provided with any other decision in respect of these elements of the proposed scheme. I shall, therefore, regard the Council as having deemed to refuse a LDC for these elements of the development proposed.

## Main Issue

4. Section 192(2) of the Town and Country Planning Act 1990 as amended (the 1990 Act) indicates that if, on an application under this section, the local planning authority are provided with information satisfying them 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; and in any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse (deem to refuse) to grant a LDC was well founded. In this respect,

the burden of proof is on the appellant to show that the development referred to in the application would be lawful if begun on the date the application was made.

## **Reasons**

5. It is the appellant's case that the proposed scheme of development described in the header above would be permitted by Class A, Class B, Class D and Class E of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order), hereafter referred to as Class A, Class B, Class D and Class E.

### *- Alterations and extensions to the dwellinghouse*

6. Class A permits the enlargement, improvement or other alteration of a dwellinghouse; Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof; and Class D permits the erection or construction of a porch outside any external door of a dwellinghouse.
7. The officer's report submitted by the Council concludes that all works to extend and alter the dwellinghouse at the appeal site would be permitted by Class A, Class B and Class D. Having considered the elements of the proposals to which these Classes are relevant, I have no reason to disagree with this conclusion.
8. Paragraph 193(4)(b) of the 1990 Act informs that, where an application for an LDC specifies two or more operations, a LDC may be issued for all of them or some one or more of them. The proposed alterations and extensions to the dwellinghouse are discreet from the proposed outbuilding. Accordingly, as these works to the dwellinghouse would have been lawful if instituted or begun on the date the LDC application was made, paragraph 193(4)(b) of the 1990 Act permits me to grant a LDC for them. This is regardless of my conclusions on the lawfulness or otherwise of the proposed outbuilding.

### *- Outbuilding*

9. Class E permits, amongst other matters, the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Council suggests that the outbuilding proposed in this case would not have been permitted by Class E as it would not be incidental to the enjoyment of the dwellinghouse. This is, therefore, the main consideration in this case.
10. An essential feature of an incidental use is that it should have a functional relationship with the primary use (i.e. the dwellinghouse at the appeal site in this case), and the relationship should be one that is normally found. Whilst paragraph E.4. of Class E provides an interpretation of an incidental purpose, this is limited. The MHCLG Technical Guidance on permitted development rights for householders provides further assistance, suggesting that a large range of buildings might be permitted by the Order, provided they can properly be described as having a purpose incidental to the enjoyment of the dwellinghouse. It also states that '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'.

11. In addition to the above, my attention has been drawn to the case of *Emin v SSE & Mid Sussex DC* [1989] JPL 909. This is relevant to the case before me as it indicates that, even if the nature of the activities carried out in a proposed building were considered to be incidental or conducive to the very conditions of living in the dwellinghouse, the scale of those activities is important. The case suggests that, if the nature and scale of such activities go beyond a purpose merely incidental to the enjoyment of the dwellinghouse as such, they may constitute something greater than a requirement related solely to that purpose. It advises that 'the fact that such a building has to be required for a purpose associated with the enjoyment of a dwellinghouse cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case'.
12. The judgment informs that the test to be applied is 'whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house'. It also states that 'when a matter is looked at as a whole, size may be an important consideration but not by itself conclusive'.
13. The building proposed in this case would be linear and single storey in its form, and would provide two rooms, each having external access via folding doors. The building would accommodate a gym in one room, and in the other a changing area with shower, double sink, a w.c. and some storage.
14. The Council do not suggest that, in principle, the use of a building on the site as a gym would not be incidental to the enjoyment of the dwellinghouse as such. Indeed, a home gym would not be a use that is part and parcel of everyday living in a home. Rather it is a use that would be ancillary or subordinate to the dwellinghouse.
15. My findings on this matter do not change, even when the development is considered in the context of the planning unit. I can see that there are other buildings within the appeal site. Whether these are buildings within the planning unit in this case is another matter. Nevertheless, the evidence does not indicate that there are other buildings within the planning unit used for the purpose of a gym. Furthermore, the plans show that there are no existing gym facilities within the dwellinghouse.
16. I note that the Council point to the size of the building and I can see that its footprint would be large when compared to that of the dwellinghouse. However, gym equipment can often be bulky and the plans indicate that the gym room would comfortably accommodate only three larger pieces of equipment. As such, and noting that the building is single storey, I find the proposed accommodation for the gym (i.e. the footprint of the proposed gym area) to be reasonable.
17. The gym is not, however, the only purpose of the building. A substantial portion of it would accommodate a room to change, along with a shower, a w.c., and a double sink. Whilst this second room would also be used for storage, the plans indicate that this would be minimal, and would be for the storage of items including those usually found in a bathroom. Indeed, the purpose of this room is akin to that of a bathroom, which the dwellinghouse on the appeal site already provides. The building would provide facilities that are

part and parcel of everyday living in a home and would, therefore, provide primary living accommodation.

18. For these reasons, I cannot conclude that the proposed building would be required for a purpose incidental to the enjoyment of the dwellinghouse as such. The building would not, therefore, have been lawful had it been instituted or begun on the date the LDC application was made, as it would not have been permitted by Class E, or indeed any other part of the Order.

### **Conclusion**

19. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal in part to grant a certificate of lawful use or development in respect of the erection of a Class A side extension; a Class B hip to gable extension; and Class D porches was not well-founded and that the appeal should succeed in part. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.
20. Otherwise, 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 a Class E outbuilding was well-founded and that the appeal should fail insofar as it relates to this matter. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

### **Formal Decision**

21. The appeal is allowed in part and attached to this decision is a certificate of lawful use or development describing the extent of the proposed operation which is found to be lawful.
22. Otherwise, the appeal is dismissed.

*J Moss*

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

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**IT IS HEREBY CERTIFIED** that on 19 April 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 works specified in the first schedule hereto would have been permitted by Class A, Class B and Class D of Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

*J Moss*

INSPECTOR

Date: 18<sup>TH</sup> APRIL 2023

Reference: APP/D3640/X/21/3289756

### ***First Schedule***

The erection of a side extension, a hip to gable extension and porches, as shown on the drawings numbered 2021-03-355-004 revision A and 2021-03-355-003 revision B.

### ***Second Schedule***

Land at Meadow View, Chobham Park Lane, Chobham, Woking GU24 8HG.

## 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, would not have been 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.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 18<sup>TH</sup> APRIL 2023

**by J Moss BSc (Hons) DipTP MRTPI**

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Scale: Not to scale

