



Appeal Decision

Site visit made on 20 April 2023

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 23RD JUNE 2023

Appeal Ref: APP/X0415/X/22/3295128

Land at Little Grove, Grove Lane, Ashley Green HP5 3QQ

- 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 Kevin McCarthy of Newlyn PLC against the decision of Buckinghamshire Council.
 - The application ref PL/21/2840/SA, dated 16 July 2021, was refused by notice dated 10 September 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 the erection of extensions, a roof addition and incidental outbuildings under Schedule 2, Part 1, Classes A, B, D and E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).
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Preliminary Matters

1. Although not referred to in the description of development, the plan number L1156/75 shows a 'new drive' to the front of the proposed garage building. The parties have also referred to this in their evidence. Accordingly, I will consider this as an element of the proposed scheme of development in this case.

Main Issue

2. 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 instigated 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 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.
3. There are various elements to the development proposed. For ease of reference, I have listed these below and will refer to them as follows:
 - Large enlargement to north facing elevation;
 - Small enlargement to north facing elevation;
 - Enlargement to west facing elevation;

- Roof enlargement;
 - New driveway;
 - Garage building; and
 - Pool house, gym and games room building.
4. The appellant's case is that the proposed development would be permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015 (the 2015 Order). Whether or not he is correct is the main consideration in this case. The Appellant points to Class A, Class B, Class E and Class F, of Part 1, Article 3, Schedule 2 of the 2015 Order.
 5. Class A permits the enlargement, improvement or other alteration of a dwellinghouse, while Class B permits the enlargement of a dwellinghouse consisting of an addition or alteration to its roof. Class E permits, among 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. Finally, Class F permits, amongst other matters, development consisting of the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such.
 6. In determining the appeal I have had regard to the MHCLG Technical Guidance on permitted development rights for householders.

Reasons

7. Before I consider each element of the scheme of development proposed, there are two matters that are relevant to a number of the proposed elements. These are, namely, the implications of condition 6 of the historic planning permission reference CH/1983/1135/FA (the 1983 permission) for the change of use of the site, and whether or not the land upon which the development would be located is within the curtilage of a dwellinghouse. Once I have considered these matters, I will move on to consider each element of the proposed development in turn.

Condition 6 of the 1983 permission

8. It is clear from the planning history that there has been a historic use of land and buildings at Little Grove, including land beyond the appeal site, for education purposes. The 1983 permission granted consent for a material change of use of 'the lodge, main school house and half of connecting 2 storey school block to a single unit of residential accommodation, retention of half of 2 storey school block and single storey block for educational use, with ancillary residential use of land and existing outbuildings'. A condition of the permission referred to The General Permitted Development Order 1977, which would have been in force at that time, and informed that development falling within certain classes would not be permitted.
9. The Council had originally suggested that the condition would prevent the use of the provisions of the 2015 Order falling within Class A, Class B and Class E. However, having considered the matter further, it withdrew its case on this matter.
10. I agree with the parties, that condition 5 of the 1983 permission has the effect of a personal condition; i.e. that only A.B.S.E. Housing Co-Operative Limited

had the benefit of the 1983 permission. The appellant has confirmed that A.B.S.E. Housing Co-Operative Limited 'no longer have any involvement in the land'. Accordingly, the 1983 permission was not extant at the time the LDC application was made. I can, therefore, also agree with the parties, that the limitations imposed by condition 6 were not in force at the time of the LDC application. I conclude as such, regardless of the particular wording of the condition, noting that it does not contain the words usually used in such conditions that would continue the effect of the limitations imposed in circumstances where the legislation referred to is revoked.

11. In view of the above, I have not considered the implications of condition 6 of the 1983 permission for the development proposed further.

Curtilage

12. Part 1 of Article 3, Schedule 2 of the 2015 Order only permits development within the curtilage of a dwellinghouse. Accordingly, for development to benefit from the provisions of any of the Classes of Part 1, including the Classes of development relevant to this appeal, it must be within the curtilage of the dwellinghouse.

13. As acknowledged by both parties, curtilage is not a use of land. Whether or not land is within the curtilage of a building is a matter of fact and degree. I note that a LDC (reference PL/19/1461/EU) has been granted under section 191 of the 1990 Act for the use of the building on the appeal site as a residential dwelling (i.e. as a dwellinghouse). Accordingly, for the proposed development to be permitted by Class A, Class B, Class E and Class F, I must determine whether, at the time the LDC application was made, the land upon which the development is proposed was within the curtilage of the lawful dwellinghouse at the appeal site.

14. The MHCLG technical guidance on Permitted development rights for householders provides some assistance in this case. At page 7 it states:

"Curtilage" – is land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.

15. As noted above, the curtilage of a building must form part and parcel with the building and should, therefore, be intimately associated with it. I have had regard to the caselaw on this matter that has been drawn to my attention¹. This informs that, important to my consideration of this matter is: (i) the physical layout of the building and the land said to be curtilage; (ii) ownership of the land (past and present); and (iii) use or function of the land (past and present).

- Layout

16. The appeal site is particularly overgrown with vegetation and has the appearance of land that has not been actively used for some time. The

¹ Including *Challenge Fencing Ltd v SoS for HCLG and Elmbridge Borough Council* [2019] EWHC 553 (Admin), *Skerritts of Nottingham Ltd v SSETR* (No. 1) [2000] EWCA Civ 60; [2000] JPL 789, *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin) and *HM Attorney-General ex rel Sutcliffe & Rouse & Hughes v Calderdale BC* [1983] JPL 310.

dwellinghouse is also in a similar condition. This sits in the south-west corner of the site.

17. A short distance from the north facing elevation of the dwellinghouse is a wall running west to east for the depth of the dwelling. This encloses a small area of land directly adjacent to the north facing elevation of the dwellinghouse. It also defines a change in the level of the land from the enclosed area to land beyond. About halfway along the wall, I noted a gap and a number of steps running down from the land adjacent to the dwellinghouse to the land to the north. This wider northern parcel of land is enclosed by mature trees and vegetation along most of its northern and eastern boundary, and a wall along most of its western boundary. This northern parcel of land also shares a boundary to the rear of the two adjoining dwellings.
18. To the east it is suggested that the land accommodated a sweeping driveway from Grove Lane and circular turning area immediately to the east of the dwellinghouse. Whilst I noted evidence of vehicles having driven over the land, the suggested historic features of the land to the east, including the sweeping drive referred to, were not obvious.
19. Adjacent to this eastern parcel of the appeal site is land occupied by the annexe building. On the LDC plans the boundary of the appeal site has been drawn a short distance from the front elevation of this building. However, I observed no discernible features on the site that correspond to this boundary. This adjoining site appeared open to the appeal site. The eastern parcel is otherwise bound by Grove Lane to the east and the shared access track to the south.
20. There is a small area of land to the west of the dwellinghouse. From what I could see on the site visit, this is enclosed by the boundary treatment separating the appeal site from the adjoining dwelling. There is a small area of land to the south of the dwellinghouse. This also shares a means of enclosure with the adjoining dwelling to the west, as well as sharing a boundary with the access track to the south.
21. In view of the current condition of the site, it is difficult to establish a meaningful picture of the site layout at present. It is, therefore, beneficial in this case to consider the historic layout. In particular, the evidence of the layout of the site at the time it was last in active use. I have had regard to the aerial photographs and historic plans provided by the Council. From these it is clear that the appeal site formed part of what would have been a wider complex of buildings and land. The layout plan for the 1983 permission shows a wider site occupied by school blocks to the west and south-west of the dwellinghouse, a garage building to the north-west (now referred to on the layout plan as Keepers Cottage), and the annexe building and east lodge to the north-east. There was also a parcel of land to the south-west of the dwellinghouse, although the plan does not indicate any buildings or other such features on that parcel of land.
22. As for other physical features evident on the historic records, the wall along the eastern boundary of Keepers Cottage is visible in some of the Council's photographs. As is the enclosure close to the north facing elevation of the dwellinghouse. I can also see the driveway and turning circle to the east of the dwellinghouse in these images.

23. Whilst the 1983 permission layout is relevant to my determination of the appeal, I cannot regard it as definitive in showing the curtilage of the dwellinghouse. Rather, this shows a wider site where there are a number of buildings set within the grounds of the site. The Council's photographs and the 1983 permission plan show a layout where, in particular, the dwellinghouse and school block buildings appear to share the ground within which they sit.
24. The plan assists in indicating the location of some physical features, some of which are still present on the site. The layout shown on the plan does not, however, provide assistance in demonstrating that the curtilage of the dwellinghouse extends to the full extent of the appeal site and beyond. This is particularly so in view of how other buildings also occupied the land.

- Ownership

25. As I note above, the appellant has confirmed that A.B.S.E. Housing Co-Operative Limited, referred to in the decision notice subject of the 1983 permission, no longer have an interest in the land. Ownership of the appeal site has, therefore, changed since that time.
26. The layout plan submitted with the LDC application shows the land occupied by the annexe building outlined in blue. This indicates that the appellant has an interest in, or otherwise owns, this land, as well as the appeal site. Otherwise, the remainder of the land subject of the 1983 permission appears to be owned separately.

- Use or Function

27. The caselaw informs that land within the curtilage of the dwellinghouse usually has an intimate association with the dwellinghouse; that it serves the purpose of the dwellinghouse in some necessary or reasonably useful way.
28. Whilst I have noted the present layout and ownership of the site and adjoining land, there is little evidence on how the appeal site is actually used at present. Indeed, neither the evidence before me nor my site visit observations lead me to find it likely that the site is either occupied or in active use. The condition of the appeal site is such that clearly a considerable period has passed since the land was in active use. The last active use or function of the land is not, therefore, obvious.
29. Accordingly, I am unable to reach any meaningful conclusions on the present function of the land, or purpose to which the land surrounding the dwellinghouse is currently put, such that I can conclude that the land claimed to be the curtilage of the dwellinghouse is, as a matter of fact and degree, its curtilage. I must, therefore, turn to the evidence I have on how the land was used, when it was last in use.
30. In this regard, I note that there is no dispute that the land and buildings on the appeal site and adjoining land were historically used for educational purposes. The 1983 permission grants consent for a material change of use of the site to include a single unit of residential accommodation. There is no dispute that the 1983 permission was implemented.
31. The appellant suggests that the 1983 permission granted consent for the use of the 1983 permission site in association with the single unit of residential accommodation permitted. In this regard I note that the appeal site forms part

of the 1983 permission site. The appellant points to the description of development permitted in 1983 as including 'ancillary residential use of land and existing outbuildings'. He says that, for this reason, the appeal site should be regarded as the curtilage of the dwellinghouse.

32. In support of his position on this matter, the appellant refers to the case of *Barnett v SoS for CLG* [2010] 1 P.& C.R.8. Whilst I note the extracts of that case provided by the appellant, there are some differences between that case and the appeal before me. Notably, the description of the development in the 1983 permission includes the educational use of land and buildings, as well as the residential use. Indeed, the description refers to a shared use of certain buildings on the site. The Council suggest that the 1983 permission granted consent for a mixed use for a residential and an educational use.
33. When the description of development in the 1983 permission is read as a whole, and regard is had to the 1983 layout plan, I can only agree that the development approved was for a mixed use. Whilst I acknowledge that this permitted the use of the 1983 permission land for an ancillary residential use, it does not prevent the use of that land in association with the educational element of the mixed use permitted. For this reason, I am not persuaded that the land identified outlined in red on the 1983 plan, read together with the 1983 permission, demonstrates that the use and function of the appeal site is such that it can all be regarded as the curtilage of the dwellinghouse.
34. Moving on, it is worth noting that, whilst the appellant has not confirmed when A.B.S.E. Housing Co-Operative Limited's occupation of the land cease, he has not suggested that there have been any subsequent occupiers or active users of the appeal site since. There is evidence of some parts of the land to which the 1983 permission relates having been separated from the appeal site physically, in use, and/or in ownership (i.e. Keepers Cottage, East Lodge, the land occupied by the recently constructed dwellings to the west of the dwellinghouse and the parcel of land to the south-west). There is nothing before me to indicate that the last active use of the appeal site was for anything but the use to which it was put by A.B.S.E. Housing Co-Operative Limited.
35. Notwithstanding this, I have little evidence of A.B.S.E. Housing Co-Operative Limited's actual use of the site following the grant of the 1983 permission. This detail might include whether the external parts of the 1983 permission site were used openly by the two permitted uses, or whether there were discreet parts of the 1983 permission site put to some specific purpose associated with one or other of the two uses. There is little evidence of the function of the various parts of the site and the purpose these various parts of the site performed when both the residential accommodation use and the educational use were active. Accordingly, whilst I note the reference to an ancillary residential use of land in the description of development permitted in 1983, I have insufficient evidence to conclude that the land that is the subject of the appeal before me, which includes the land surrounding the dwellinghouse, was put to this use.
36. I also note the requirements of condition 3 of the 1983 permission, which seeks to confine the residential accommodation to the buildings indicated in blue on the 1983 plan, as well as confine an ancillary residential or educational use to the garage and stable block. Whether or not the condition achieves this

purpose is another matter. The evidence provided does not demonstrate whether or not the occupier of the site used it in a way that complies with this condition.

37. I note the appellant's reference to the accounts of Messrs Daniel and Tony Harman. Whilst this might provide evidence of the connection between the wider 1983 permission site and the dwellinghouse, the detail provided is not sufficient for me to conclude that the use of the appeal site was for a use associated with the dwellinghouse alone.
38. The land may have been set out as gardens and lawn during the Harman family's ownership of the site and as shown in the 1993 and 2003 photographs. However, this does not demonstrate that the land was only used by the residents of the dwellinghouse, and that it was not used by staff and pupils of the education facility. Indeed, school premises often have gardens within their grounds.
39. I have had regard to the Council's approval of the recent LDC application² relating to the use of the wider appeal site. Other than the matters considered above, the officer report contains no additional reference to any actual use of the land. It appears to rely on the 1983 permission to conclude that the use of the land for a residential use is lawful.

– Summary on Curtilage

40. Bringing all of the above together, I have had regard to all evidence, including the 1983 permission and the recent LDC, referred to above. I am, however, mindful of the caselaw that has been drawn to my attention. This indicates that, whether or not the use of land in association with a building is permitted or is otherwise lawful is not a definitive matter in determining whether or not the land is within the curtilage of a building.
41. Whilst the appeal site has not been occupied or actively used for some time, it is reasonable to consider how the land was used when it was last occupied. I have considered the evidence before me on this matter. However, I find it insufficient to conclude that it is more likely than not that the land claimed as the curtilage of the dwellinghouse had an intimate association with the dwellinghouse and that it served the purpose of the dwellinghouse in some necessary or reasonably useful way.
42. I have noted the land that is enclosed with the dwellinghouse, adjacent to the north facing elevation. I have also noted the small areas of the site to the west and south of the dwellinghouse, which are physically defined with an enclosure and/or access track, and that they share a boundary with land in which the appellant has no interest. Although I have limited evidence on how these areas of the site have been used, their physical association with the dwellinghouse, and that they are enclosed with it, leads me to conclude that these areas are within the curtilage of the dwellinghouse.
43. I note that there is no similar enclosing feature or boundary of ownership to the east of the dwelling, other than Grove Lane itself. I also acknowledge that the areas close to, and enclosed with the dwellinghouse to the south, west and north are small when compared to the site as a whole. However, relevant to these circumstances is the MHCLG Guidance, which advises that for some

² Council reference PL/19/4144/EU.

houses, especially in the case of properties with large grounds, the curtilage may be a smaller area.

44. Save for the areas enclosed with the dwellinghouse, as referred to above, the evidence I have before me does not demonstrate, as a matter of fact and degree, that all other parts of the appeal site are more likely than not to be within the curtilage of the dwellinghouse.

Large enlargement to north facing elevation

45. The plans show that the largest of the two proposed enlargements to the north facing elevation of the dwellinghouse would extend over the land enclosed with the dwellinghouse and into land to the north of the wall enclosure close to the north facing elevation. Having regard to my conclusions above, the enlargement would extend into land that is not within the curtilage of the dwellinghouse.
46. For this reason, the proposed large enlargement to the north facing elevation of the dwellinghouse would not have been permitted by Class A if it had been instigated or begun on the date the LDC application was made.

Small enlargement to north facing elevation

47. As the Council has reviewed and changed its position with regard to condition 6 of the 1983 permission, there is agreement that the smaller of the two enlargements to the north facing elevation of the dwellinghouse would have been permitted by Class A if it had been instigated or begun on the date the LDC application was made. I have no reason to disagree with this agreed position.

Enlargement to west facing elevation

48. Criterion A.1.(e)(ii) of Class A states that development is not permitted by Class A if the enlarged part of the dwellinghouse would extend beyond a wall which fronts a highway and forms a side elevation of the original dwellinghouse. Both parties agree that the enlargement to the west facing elevation would be of the type described in criterion A.1.(e)(ii) and I have no reason to find otherwise.
49. Notwithstanding the above, the parties dispute whether or not the development would be that described in criterion A.1.(h)(ii) which states that development would not be permitted by Class A if the enlarged part of the dwellinghouse would have more than a single storey and be within 7 metres of any boundary of the curtilage of the dwellinghouse being enlarged which is opposite the rear wall of that dwellinghouse. The Council point to the basement shown on the site plan numbered L1156/75 which shows the outline of a basement extending towards the western boundary of the site. The proposed enlargement to the west facing elevation of the dwellinghouse would be partly above this basement and, together, would form a two-storey element.
50. Critical to criterion A.1.(h)(ii) is whether the basement is a previous addition or is part of the original dwellinghouse. The burden of proof in this regard is on the appellant. Paragraph 2(b) of the 2015 Order defines 'original' as, in relation to a building, other than a building which is Crown land, built on or after 1st July 1948, as so built.

51. There is no dispute that the building pre-dates 1 July 1948. Whilst the appellant suggests that it would have been common for older properties of this type to have coal stores and a boiler house, he has provided little evidence to demonstrate that the basement serving this property was constructed for that purpose. Neither does he provide evidence to demonstrate that the basement was constructed at the same time as the dwelling or prior to 1 July 1948. Accordingly, I am unable to conclude that, on the balance of probability, the basement is an original part of the dwellinghouse for the purpose of the 2015 Order. For this reason, I am only able to conclude that the development would fall within the development type described in A.1.(h)(ii) of Class A.
52. In view of the above, the proposed enlargement to the west facing elevation of the dwellinghouse would not have been permitted by Class A if it had been instigated or begun on the date the LDC application was made.

Roof enlargement

53. An 'L' shaped dormer extension is proposed to the roof slope of the south facing element of the dwellinghouse. The Council suggests that the volume of the proposed dormer would mean that criterion B.1.(d) of Class B would apply as the development would exceed the limitation of 50 cubic meters. The appellant has provided detailed measurements of the proposed dormer which the Council say show dimensions that differ slightly from those shown on the plans submitted with the LDC. It suggests that the depth of the dormer has been altered.
54. Nevertheless, the Council have used the dimensions provided and have calculated that the volume of the proposed dormer would exceed 50 cubic meters. The appellant does not dispute the Council's calculations and neither do I. Accordingly, the proposed roof enlargement would not have been permitted by Class B if it had been instigated or begun on the date the LDC application was made.

New driveway

55. The LDC plan showing the location of the proposed outbuildings also shows a 'new drive in permeable paving on suitable sub base'. The new drive would be located on land that I have concluded is not within the curtilage of the dwellinghouse. For this reason, the development would not have been permitted by Class F if it had been instigated or begun on the date the LDC application was made.

Garage building and pool house, gym and games room building

56. The plans show that both the garage building and the pool house, gym and games room building would be located on land to the north of the wall enclosure close to the north facing elevation of the dwellinghouse. Having regard to my conclusions above, the buildings would not be located on land within the curtilage of the dwellinghouse. For this reason, they would not be permitted by Class E.
57. Notwithstanding this, the Council also suggest that the buildings would not be incidental to the enjoyment of a dwellinghouse. 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. The MHCLG technical guidance identifies

garages as common buildings permitted by Class E, but says that this is as long as they can properly be described as having a purpose incidental to the enjoyment of the dwellinghouse. The guidance also says that a purpose incidental to a house would not 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.

58. 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'.
59. 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'.
60. The plans indicate that the garage building would be used to accommodate 6 vehicles. If it were the case that the building would be located within the curtilage of the dwellinghouse, the MHCLG guidance, referred to above, supports the conclusion that the use of a building as a garage is incidental or conducive to the very conditions of living in the dwellinghouse at the appeal site.
61. I acknowledge that a substantial floor area would be required to store even a small number of vehicles. Furthermore, it is not unusual for some households, particularly large families with adult children, to own multiple vehicles. I also acknowledge that there are no other buildings within the appeal site that would provide accommodation for the parking or storage of vehicles.
62. I do, however, find a collection of 6 cars to be stored in this building extensive, even for a large domestic residence. Furthermore, the size of the building is substantial. The plans show 6 vehicles in place within the building, which appear to be of a standard size. In doing so I note that there is a substantial area of the floorspace within the building where vehicles are not parked, including the central area and space around the vehicles. Indeed, the Council note that the depth of the building leaves each vehicle with a parking space 4 metres wide, which far exceeds the Council's standards for a parking space.
63. The Council suggest that the building could be put to some other purposes, including for work on the vehicles, a workshop area and some domestic storage. Whilst the appellant repeats the Council's comments in this regard, he does not suggest that the building is proposed for these purposes, or for anything other than for vehicle parking.

64. It may well be the case that the vehicles to be parked in the building are luxury cars, requiring secure accommodation. I also note the appellant's suggestion, that the size of the building would allow the vehicles to be more easily manoeuvred. However, in my judgement the space proposed to accommodate the vehicles far exceeds what is reasonable for vehicle parking in a domestic setting. Indeed, the accommodation proposed for the parking of 6 vehicles is more akin to a vehicle showroom, rather than a domestic garage.
65. All things considered, I conclude that the garage building proposed would not be for a purpose incidental to the enjoyment of the dwellinghouse.
66. I turn now to the pool house, gym and games room building. Having regard to the types of development listed in Class E, swimming pools are clearly included as development permitted, provided they are required for a purpose incidental to the enjoyment of the dwellinghouse. I have no reason to find otherwise with regard to the steam room, sauna, gym and games room that would be accommodated within the building. There is no dispute in this case that the building would be used otherwise than for the enjoyment of the dwellinghouse, or that any part of the building would be used other than by the occupiers of the dwelling on the appeal site.
67. Notwithstanding the above, I acknowledge that facilities such as swimming pools and a home gym might well require a large area of internal space. The footprint of the building would, nevertheless, be substantial. Even if I were to conclude that all land within the appeal site is within the curtilage of the dwellinghouse, the building would accommodate a substantial area of the site, particularly when compared to the dwellinghouse. Although not comparable in height, the building would not appear subordinate in scale and would result in an unbalanced relationship with the dwellinghouse. This was a matter considered in the appeal decision³ that has been brought to my attention.
68. The layout of the proposed building also includes an internal hallway, linking the rooms at either end of the building. This adds to the footprint and overall size of the building, but serves no useful purpose for such a domestic outbuilding, particularly as the building would only be used by a single household. I cannot find this element of the layout, which adds to the size of the building, to be reasonable or necessary.
69. In addition to this, the building would provide three separate rooms that would accommodate a w.c., two of which would also accommodate a shower. There is also a further room that would be used for changing. Such facilities are ordinarily associated with primary living accommodation, which the MHCLG guidance tells us that a purpose incidental to a house would not normally cover. I acknowledge that a shower and w.c. is not uncommon in a pool house, which was the view of the inspector in the appeal referred to above. It is not unreasonable for the occupiers to want to shower in the building before and after using the pool, or to have use of a w.c. without having to leave the building. However, the number of rooms proposed to accommodate a w.c., shower and changing facilities are excessive for a domestic outbuilding and would be unreasonable.
70. Having regard to the above, I am not persuaded that the pool house, gym and games room building, when considered as a whole, would be reasonably

³ Appeal reference APP/V1260/X/20/3252032.

required for a purpose incidental to the enjoyment of the dwellinghouse as such.

71. For the reasons given above, I conclude that the garage building, and pool house, gym and games room building would not have been permitted by Class E had they been instigated or begun on the date the LDC application was made.

Overall Summary

72. Whilst I have concluded that the proposed smaller enlargement to the north facing elevation of the dwellinghouse would have been permitted by Class A if instigated or begun on the date the LDC application was made, I do not conclude the same with regard to all other elements of the scheme of development proposed.
73. The smaller enlargement is a discrete element of the proposed scheme, separate from all other elements. Accordingly, I have concluded that a LDC ought to be granted for this part of the development in the terms set out below.

Conclusion

74. 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 the smaller enlargement to the north facing elevation of the dwellinghouse 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 in respect of this matter.
75. 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 development described as the erection of extensions, a roof addition and incidental outbuildings, as well as a new drive, was well-founded and that the appeal should fail insofar as it relates to these matters. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act in respect of these matters.

Decision

76. 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.
77. 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

IT IS HEREBY CERTIFIED that on 16 July 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 proposed extension would be permitted by Class A, Part 1, Article 3, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

J Moss
INSPECTOR

Date: 23RD JUNE 2023

Reference: APP/X0415/X/22/3295128

First Schedule

The construction of an enlargement to the north facing elevation of the dwellinghouse in the location highlighted in blue on the attached plan.

Second Schedule

Land at Little Grove, Grove Lane, Ashley Green HP5 3QQ

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, 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 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.



The Planning Inspectorate

Plan

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

by J Moss BSc (Hons) DipTP MRTPI

Land at: Little Grove, Grove Lane, Ashley Green HP5 3QQ

Reference: APP/X0415/X/22/3295128

Scale: Not to Scale

