



Appeal Decision

Site visit made on 7 August 2023

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15th August 2023

Appeal Ref: APP/W1525/X/22/3309551

Greenacres, Mill Hill, Galleywood, Chelmsford, Essex CM2 8TW

- 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 Luke Giles against the decision of Chelmsford City Council.
 - The application ref 22/01521/CLOPUD, dated 11 August 2022, was refused by the Council by notice dated 6 October 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 proposed single-storey detached outbuilding.
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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.

Procedural Matters

2. Although the development is described as a single-storey detached outbuilding on the application form, the submitted plans also indicate a swimming pool. The Council issued an LDC for the swimming pool but refused to grant an LDC for the outbuilding. The appellant has stated that the swimming pool was not part of the application and an LDC has previously been granted for it¹. It is for the appellant to propose the operation and there is no power under the 1990 Act for either the local planning authority or the inspector to modify the terms of the application. I have dealt with the appeal on the basis that the appellant is seeking to ascertain the lawfulness of the outbuilding only.
3. There was no representative from the Council at the site visit but the appellant allowed me to access the site on an unaccompanied basis. I am satisfied that no injustice is caused.

Reasons

4. 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 relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the development proposed would, at the date of the application, be lawful.

¹ Ref 22/00746/CLOPUD

5. The decision turns on whether the outbuilding would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). There is no disagreement that in all other respects the outbuilding would fall within the scope of Class E of Schedule 2 Part 1 of the GPDO, and I have no reason to conclude otherwise. The Council refused the application on the basis that the outbuilding is not required for a purpose incidental to the enjoyment of the dwellinghouse, due to its size and layout.
6. Class E 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...'. It has been established by case law that an incidental use should be functionally related to the primary use, but not 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 dwellinghouse, and to determine whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. The size of the building in relation to the dwelling is relevant but not a conclusive factor.
7. The outbuilding would be a substantial single storey building. Most of it would be open plan, comprising a study/home office and a gym. The rest of it would be divided into three rooms – a WC, a changing room and a plant room. Case law has established that a wide range of activities is capable of being considered incidental to the enjoyment of a dwelling.
8. It is not unusual to have a home office/study in an outbuilding. The submitted floor plan indicates that it would accommodate a desk and storage. This does not seem excessive in size, nor is it unreasonable for it to be similar in size to the minimum standard for a double bedroom. I note that planning permission has been granted for extensions to the dwelling². The approved drawings do not indicate space for a home office/study, and I do not therefore agree that this could be provided within the extended dwelling.
9. A home gym is something that is normally found in relation to a dwellinghouse, and there is a functional relationship with the dwellinghouse. The gym would be a substantial part of the floor space of the building. The proposed floor plan indicates that it would accommodate some large items of gym equipment. The appellant's statement explains that the empty floor space is required for free weights and floor exercises. In my view the floor area is not of the scale that would be required by a commercial gym and is not unreasonable. I do not find that the size of the gym space is excessive for its purpose.
10. The pool, the subject of the previous LDC, will be located some distance away from the main house and at the bottom of a slope. It would clearly be convenient to be able to use a WC and changing room close to the pool. The plant room would serve the pool and the outbuilding itself and it is therefore reasonable to locate it in the outbuilding. Although a WC could be primary accommodation, in this case, it would not be unreasonable to regard it as incidental to the uses within the outbuilding. The WC, changing room and plant

² Ref 22/00866/FUL

room are not excessive in size and are reasonably required to accommodate the incidental purpose.

11. Overall, the outbuilding is considerably smaller in floorspace when compared with the two-storey house. As a relatively modest single storey outbuilding, it is clearly subordinate and its size is reasonable in the light of the living accommodation available within the dwelling. I understand the Council's concern that the proposed purpose of the outbuilding has changed since a previous refused application³, but I do not agree that this should be taken to indicate that the outbuilding would not be incidental.
12. Taking the above factors into account, on the balance of probabilities, I find that the purpose of the outbuilding would be incidental to the enjoyment of the dwellinghouse, and its size is what would be reasonably required to fulfil that purpose. On the evidence before me, I conclude that the building would be permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.

Conclusion

13. 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 construction of a gym outbuilding 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.

N Thomas

INSPECTOR

³ Ref 22/00746/CLOPUD

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 11 August 2022 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 proposed operation is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas

Inspector

Date: 15th August 2023

Reference: APP/W1525/X/22/3309551

First Schedule

Proposed single-storey detached outbuilding

Second Schedule

Land at Greenacres, Mill Hill, Galleywood, CHELMSFORD, Essex, CM2 8TW

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 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 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: 15th August 2023

by N Thomas MA MRTPI

Land at: Greenacres, Mill Hill, Galleywood, CHELMSFORD, Essex, CM2 8TW

Reference: APP/W1525/X/22/3309551

Scale: Not to Scale

