



Appeal Decision

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 4 September 2023

Appeal Ref: APP/P1805/X/23/3314062

80 Fairfield Road, Bournheath, Bromsgrove B61 9JJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Mark Banham against Bromsgrove District Council.
 - The application ref 22/00711/CPL is dated 20 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 described as 'Outbuilding – this will be permitted development pursuant to Class E because: the ground area will not exceed 50% of the curtilage excluding the original dwelling; it will not be forward of the principal elevation; it will not have more than one storey; it will not exceed 4m in height; the eaves will not exceed 2.5m nor be within 2m of the boundary; it will not involve the provision of a veranda, balcony or raised platform; it is not within Article 2(3) land; and it does not exceed in terms of floor space use more than reasonably necessary for the purposes of incidental enjoyment of the dwellinghouse as such'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed development which is found to be lawful.

Application for costs

2. An application for costs was made by Mr Mark Banham against Bromsgrove District Council. This application is the subject of a separate decision.

Procedural Matters

3. In an appeal under s195 of the Act the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on the facts and on relevant planning law. Consequently, no site visit was made as it was not necessary for me to view the property in order to determine the appeal.
4. The appeal is made against the Council's failure to give notice within the prescribed period of a decision on the application for an LDC. The Council has confirmed in its statement of case that had they retained jurisdiction to determine the application, they would have refused it. However, since the Council has not issued a decision, the application is deemed to have been refused.
5. I have taken the address in the banner header above from the appeal form and both parties respective appeal statements. Although this address differs from

that provided on the application form, I find that it more accurately describes the appeal site.

Main Issue

6. The main issue is therefore whether that deemed refusal was well-founded. This turns on whether the outbuilding would benefit from planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).
7. There is no disagreement between the parties that the outbuilding would comply with the size and other limitations within paragraph E.1 of Class E, and I concur with that view. The single point of dispute is whether the proposed outbuilding would meet the requirement of E(a) that it would be "*required for a purpose incidental to the enjoyment of the dwellinghouse as such*".

Reasons

8. 80 Fairfield Road is a detached bungalow set within a relatively large plot. The proposed outbuilding would be within the curtilage of the dwellinghouse and would house a gym/games room, a sauna/steam room, a shower and WC, a two-car garage, and a garden tools and mower store. Despite meeting the various size and locational limitations of Class E, the Council maintains that given its scale and intended use, the outbuilding cannot be considered to be required for purposes incidental to the enjoyment of the dwellinghouse.
9. In assessing its scale, the Council has compared the footprint of the proposed outbuilding to that of the existing bungalow. The outbuilding would have a footprint of 190sqm which, when compared to the bungalow's footprint of 172sqm, the Council considers to be excessive and takes the proposal outside the definition of a building reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.
10. However, none of the limitations or conditions within Class E of the GPDO require the footprint of an outbuilding to be smaller than that of the host dwelling. In *Emin v SSE and Mid Sussex District Council* [1989] 58 P & CR 416 it was established that whilst the size of the building may be an important consideration when determining if a building is to be used incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive. In particular, it must also be established that the outbuilding is genuinely and reasonably required, and in *Wallington v Secretary of State for Wales* [1991] 1 PLR 87 it was established that a purpose incidental to a dwellinghouse should not rest on the whim of the person who dwelt there.
11. The Council accept that, individually, the uses for the outbuilding may be incidental to the enjoyment of the dwellinghouse. However, when taken together the Council considers that they occupy an unreasonable amount of space.
12. In this particular case details have been submitted of the nature and scale of the space to be provided and the proposed uses. In terms of the garage space provided, I find this to be relatively modest for a two-car garage and that access to it could easily be provided. Similarly, given the size of the plot the area set aside for garden tools and mower store does not appear to be excessive. With regards to the gym and games room the appellant states that

this will be used to house a snooker table and gym equipment. The space provided is suitable to accommodate a snooker table with additional space for players to play and move around the table. The gym area has space to accommodate a reasonable range of equipment for an incidental use. Finally, the rooms containing the sauna/steam room and the shower and WC are of modest size and could not realistically be made much smaller.

13. The Council has also highlighted that No. 80 is a tied agricultural dwelling, however this has no bearing on whether or not the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse. The Council has also referred to the recent granting of a prior approval¹ and an LDC² for various extensions to the existing dwelling. Although I have not been provided with the full details of these permissions, there is no guarantee that these developments will be implemented. In any event, lawfulness in an LDC submitted under S192 is to be determined at the time of the application, as if the operational development had begun on that date.
14. The footprint of the outbuilding is marginally larger than that of the existing bungalow, however the intended uses are incidental to the enjoyment of the dwellinghouse and the scale of the outbuilding is no more than it needs to be. There is also no evidence to indicate that the proposed outbuilding rests on the 'whim' of the appellant. Accordingly, I am satisfied on the evidence available to me that the outbuilding would be lawful under Class E of the GPDO.

Conclusion

15. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant a certificate of lawful use or development was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

INSPECTOR

¹ Council Ref: 22/00712/HHPRIO

² Council Ref: 22/00708/CPL

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 20 May 2022 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse, and therefore meet the requirements and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). Planning permission for the development is therefore conferred by Article 3(1) and Class E of Schedule 2, Part 1 of the GPDO.

Signed

David Jones
Inspector

Date: 4 September 2023
Reference: APP/P1805/X/23/3314062

First Schedule

Outbuilding – this will be permitted development pursuant to Class E because: the ground area will not exceed 50% of the curtilage excluding the original dwelling; it will not be forward of the principal elevation; it will not have more than one storey; it will not exceed 4m in height; the eaves will not exceed 2.5m nor be within 2m of the boundary; it will not involve the provision of a veranda, balcony or raised platform; it is not within Article 2(3) land; and it does not exceed in terms of floor space use more than reasonably necessary for the purposes of incidental enjoyment of the dwellinghouse as such’

Second Schedule

Land at: 80 Fairfield Road, Bournheath, Bromsgrove B61 9JJ

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 4 September 2023

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Scale: Not to Scale

