

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 8th March 2024

Appeal Ref: APP/D1590/X/22/3294508

15 Aylesbeare, Shoeburyness SS3 8AE

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Thompson against the decision of Southend-on-sea Borough Council.
 - The application Ref 21/01645/CLP, dated 9 August 2021, was refused by notice dated 4 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 outbuilding to form games room, home gym and office.
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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 use which is considered to be lawful.

Procedural Matters

2. It was not necessary to conduct a site visit to determine the appeal, with a decision taken on the papers. This was because the written evidence was sufficient on this LDC matter of lawfulness, where no planning merits are relevant.
3. Notwithstanding the description of the proposed development, it is noted that the outbuilding would also include a shower room that is not explicitly referenced in the description. However, it seems to me that the description will suffice as the shower room might be reasonably considered to be a facility within the overall provision of a home gym. In any respect, the submitted drawings (upon which I am issuing the LDC) clearly include the shower room.

Main Issue

4. The main issue in the appeal is whether or not the Council's refusal to issue the LDC was well-founded.

Reasons

5. General planning permission for a building within the curtilage of a dwellinghouse incidental to its enjoyment is given by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') subject to exceptions and limitations (E1, E2, E3).
6. According to the officer report on the application, the Council does not dispute that the proposal would meet all the exceptions and limitations in respect of

Class E were the building considered to be incidental to the enjoyment of the dwellinghouse on the site. Further, the Council accepts that the proposal for a games room, home gym and office (with storage room and shower room) comprises uses that could be regarded as being incidental to the enjoyment of the dwelling. I have seen no evidence which contradicts or conflicts with these agreed positions between the parties, and see no reason to find otherwise.

7. Rather, the Council's refusal of the LDC rests upon a position that the proposed outbuilding, due to its size and scale (said to be some 75.4sqm), exceeds what is considered to be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. It is said within this context that the appellant has failed to demonstrate that there is a genuine and reasonable requirement for the outbuilding.
8. However, I disagree. The appellant has clearly set out why the proposal is reasonably required for purposes incidental to the enjoyment of the dwellinghouse:

"The proposed property as stated in the officers report is a detached 4-bedroom property, and whilst the property is considerable in size, in terms of number of bedrooms the downstairs living accommodation is relatively small with a single open plan living room/diner which measures 21.6sqm, and whilst there is a small conservatory to the rear of the property measuring 6.96sqm this like so many conservatories in the UK is only a comfortable space for a small period in the year when the weather is nice."

"The 4-bedroom property is large enough to sleep six people as it provides two number double bedrooms and two single bedrooms. Four adults and two children could live in a property of this type and would only have a small area of communal living space."

"The proposed outbuilding consists essentially of three rooms. A small gym, which would be large enough for a treadmill, rowing machine or static bike, a small home office and a games room, large enough to play pool or table tennis. There is a small shower room so that people can shower after a workout or use the facilities when working or playing pool, and a small store for the storage of other smaller gym equipment and board games etc."

I agree with these arguments and find these this proposed uses of the outbuilding would provide clear incidental quality as regards the enjoyment of the dwelling. It seems to me that the space afforded by the proposed outbuilding is reasonably required for the stated activities and provides separation of them within defined areas so as to not affect the enjoyment of separate users, to an extent not possible within the large communal space within the main dwellinghouse. Therefore as a matter of fact and degree, and taking into account all the relevant case law¹, I am satisfied that a building of such size would be genuinely and reasonably required and not excessive for these purposes.

9. The Council references other appeal decisions², but they do not affect my finding as (unlike in the case before me) the Inspectors found that the appellants had not adequately explained why the development was reasonably required.

¹ Including *Emin v SSE & Mid Sussex DC* [1989]

² APP/V1505/X/16/3152058; APP/Y3615/X/19/3234548; APP/R5510/X/19/3241946

Conclusion

10. 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 an outbuilding to form games room, home gym and office 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.

Andrew Walker

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 9 August 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:

General planning permission is afforded by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015

Signed

Andrew Walker

Inspector

Date: 8th March 2024

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First Schedule

Outbuilding to form games room, home gym and office
(Drawing Nos 0-700, 1-700)

Second Schedule

Land at 15 Aylesbeare, Shoeburyness SS3 8AE

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 use /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, was /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 use /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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 8th March 2024

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Scale: Do not scale

