
Appeal Decision

Site visit made on 26 March 2024

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 10th April 2024

Appeal Ref: APP/R3650/X/22/3313521

Highfield, Malthouse Lane, Hambledon, Godalming GU8 4HH

- 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 Mark Heathcote against the decision of Waverley Borough Council.
 - The application Ref WA/2022/02380, dated 9 September 2022, was refused by notice dated 27 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 the erection of an outbuilding.
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Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision

Reasons

1. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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 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 Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.
2. The provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure is permitted under Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the conditions at Classes E.1, E.2 and E.3.

3. There is no dispute that the proposed outbuilding accords with Classes E.1 and E.3. I see no reason to take a different view. The point at issue is whether the proposed outbuilding accords with Class E.2, which states that:

In the case of any land within the curtilage of the dwellinghouse which is within

(a) an area of outstanding natural beauty;

(b) the Broads;

(c) a National Park; or

(d) a World Heritage Site,

development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.

4. The appeal site is within the Surrey Hills National Landscape¹. The provisions within Class E.2 of the GPDO therefore potentially apply to the proposed outbuilding in this case. The *Permitted development rights for householders: Technical guidance* published by the Ministry of Housing, Communities and Local Government in September 2019 (Technical Guidance) advises that the effect of this limitation is to restrict the amount of permitted development for buildings, enclosures, pools and containers located more than 20 metres away from any wall of the house. The logic behind that limitation is clear: to limit buildings and other structures away from dwellings in those sensitive areas. The Technical Guidance goes on to explain that the total area of ground which may be covered by buildings etc more than 20 metres from any wall of a house is 10 square metres.
5. The diagram at page 45 of the Technical Guidance illustrates how this limitation is intended to function. In effect, the limitation creates an envelope of 20 metres depth measured from the external face of each elevation of the main dwelling. Outside of that envelope, as stated on the notation on the diagram itself, the maximum total area of ground which may be covered by buildings, enclosures, pools or containers is 10 square metres.
6. In this case, the proposed outbuilding is entirely within the envelope surrounding Highfield equivalent to that illustrated on page 45 of the Technical Guidance when applied to the facts of this case. Consequently, the limitation within Class E.2 on the total area of ground which may be covered by buildings etc more than 20 metres from any wall of a house does not in practice apply in this case.
7. There is no limitation within Class E.2 that limits the total area of outbuildings within the envelope surrounding the dwelling subject, that is, to the other limitations within Class E. There also is no limitation within Class E.2, or set out in the Technical Guidance, that requires the cumulative area of buildings outside of the 20m envelope surrounding the dwelling to be taken into account when the proposed outbuilding is itself entirely within the 20m envelope.
8. The proposed outbuilding accords fully with the provisions set out in Class E, Part1, Schedule 2 of the GPDO and is therefore permitted by that Class.

¹ On 22 November 2023, all Areas of Outstanding Natural Beauty were re-designated as National Landscapes.

Conclusion

9. 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 erection of an 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 1990 Act as amended.

Formal Decision

10. 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.

Paul Freer
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 September 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in grey 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 outbuilding accords fully with the provisions set out in Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 and is therefore permitted by that Class.

Signed

Paul Freer
INSPECTOR

Date: 10th April 2024

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First Schedule

The erection of an outbuilding, as shown on Drawing Nos: P22-043-P-001 Rev A; P22-043-P-002 Rev A; P22-043-P-003 Rev A, all dated 1 September 2022.

Second Schedule

Land at Highfield, Malthouse Lane, Hambledon, Godalming GU8 4HH

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: 10th April 2024

by **Paul Freer BA (Hons) LLM PhD MRTPI**

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Scale: Not to scale

