



Appeal Decision

Site visit made on 30 July 2024

by D Boffin BSc (Hons) DipTP MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024.

Appeal Ref: APP/T0355/X/23/3318214

The Cottage, The Straight Mile, Shurlock Row, Reading RG10 0QN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) 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 McArdle against the Council of the Royal Borough of Windsor and Maidenhead.
 - The application ref: 22/03192/CPD is dated 28 November 2022.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a LDC is sought is a proposed detached outbuilding.
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Decision

1. The appeal is allowed and attached to this decision is a LDC describing the proposed operation which is found to be lawful.

Applications for costs

2. An application for costs was made by Mr McArdle against the Council of the Royal Borough of Windsor and Maidenhead. This application for costs is the subject of a separate decision.

Preliminary Matters

3. The description of the development in the banner heading is taken from the Council's decision notice and the appeal form without the wording '*certificate of lawfulness to determine whether the... is lawful*' which is superfluous. The appeal is against the failure to give notice within the prescribed period of a decision on an application for a LDC because the appeal was received on the same day that the Council issued the decision on the LDC application. That decision notice indicated that the Council determined that '*The proposal is not automatically granted planning permission under Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), as it has not been demonstrated that the use of the building would be for purposes incidental to the enjoyment of the dwellinghouse. As such the proposal fails to comply with paragraph E.4.*'
4. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the

facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

Main Issue

5. The main issue is whether the Council's deemed refusal to grant an LDC was well-founded.

Reasons

6. The appeal property comprises a detached dwelling in spacious grounds. There are also some outbuildings within those grounds. The proposal involves erecting a detached single storey outbuilding, situated on an area laid to lawn approximately southeast of the dwelling. The outbuilding would contain a games room for a pool table with table tennis top along with a swimming pool, jacuzzi, sauna, gym and changing room, plant room and storeroom.
7. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for development within the curtilage of a dwellinghouse. Class E(a) of Part 1 allows for 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 (Class E).
8. The appellant seeks to establish that the building would be granted permission by virtue of Class E. There is no dispute between the parties that the development falls to be considered under Class E and that the proposal would meet paragraphs E.1, E.2 and E.3 of Class E. What is at issue is whether the proposal would be for a purpose incidental to the enjoyment of the dwellinghouse as such, and whether the development would be reasonably required for that use.
9. Whilst the outbuilding would contain a WC and shower, I am satisfied that these facilities would be ancillary to the leisure uses of this building. It is not unreasonable to regard the undertaking of exercise, sporting pursuits and undertaking more passive activity like enjoying a sauna or sitting in a jacuzzi, as falling within the wide range of day-to-day domestic leisure and recreational activities that occupants of a dwelling might participate in.
10. Moreover, there is no dispute that the proposed uses are ones which, in principle, could be considered as incidental to the enjoyment of the dwellinghouse. However, the Council considers that it has not been made clear what the existing outbuildings are utilised for. The Council also considers that the size of the outbuilding is significant compared to that of the dwelling.
11. Case law¹ has established that it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. It also 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.

¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

12. Dealing firstly with the size, the footprint of the outbuilding would be relatively large, and it would cover a significant portion of the lawned southeastern area of the garden. However, the dwelling is 2-storey and it has the benefit of a generous garden area. Moreover, a significant proportion of that garden area would remain as landscaped amenity space. Within this context, the size of the proposed outbuilding alone does not lead me to conclude that its purpose would not be incidental to the enjoyment of the dwelling.
13. In addition, the evidence before me indicates how the rooms in the outbuilding would be laid out. There is also a detailed justification in respect of the size of each of the spaces and their allotted use/s. On balance, I consider that the internal space allocated to each of the various activities would not be excessive. The proposed building would be of a size that, in my view, is genuinely and reasonably required to accommodate those uses.
14. Although I did not enter the dwelling, there was nothing apparent in external views, to suggest that its interior space is not fully utilised. Furthermore, most of the individual proposed rooms' intended functions, as labelled, are nowadays often found in outbuildings set aside for consolidated leisure purposes. The existing outbuildings individually do not appear large enough to provide such a consolidated function. In any case, I observed that the existing outbuildings are all fully used for storage, garaging, outdoor dining/seating and other uses. As a result, I am satisfied that the activities for which the outbuilding would be required could not reasonably be accommodated within the dwelling or the existing outbuildings.
15. As such, in this case I consider there to be sufficient detail to determine that the proposed development would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3, Schedule 2, Part 1, Class E of the GPDO.
16. This finding would not prevent the Council from exercising its powers of enforcement if the appellant proceeds to construct the proposed building not in accordance with the submitted plans, or to construct it for a different purpose, or if the building is subject to a future material change of use.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant an LDC in respect of the proposed detached 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.

D Boffin

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 28 November 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations are permitted under the provisions of Class E of Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

D Boffin

Inspector

Date: 12 August 2024.

Reference: APP/T0355/X/23/3318214

First Schedule

The erection of proposed detached outbuilding, as shown on the submitted proposed elevations and proposed floor plan drawings.

Second Schedule

Land at The Cottage, The Straight Mile, Shurlock Row, Reading RG10 0QN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the 1990 Act.

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 operation 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 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

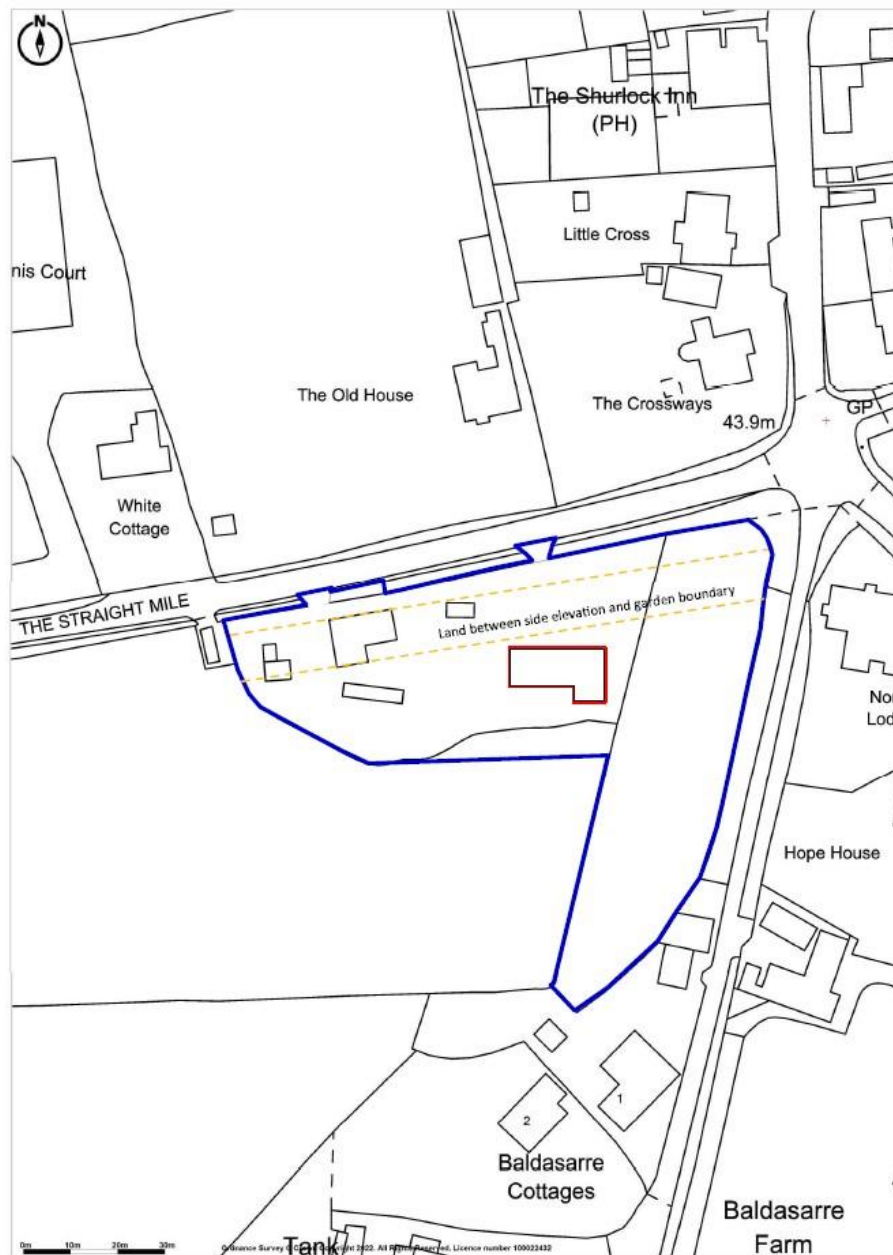
This is the plan referred to in the Lawful Development Certificate dated: 12 August 2024

by D Boffin BSc (Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

Land at: The Cottage, The Straight Mile, Shurlock Row, Reading RG10 0QN

Reference: APP/T0355/X/23/3318214

Scale: Not to Scale



Promap
LANDMARK INFORMATION

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