



Appeal Decision

Site visit made on 25 February 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 7 March 2025

Appeal Ref: APP/Y3615/X/24/3340338

Amberwell, Newlands Corner, Guildford, Surrey GU4 8SE

- 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 Linda Dymore-Brown against the decision of Guildford Borough Council.
 - The application ref 23/P/02119, dated 21 December 2023, was refused by notice dated 15 February 2024.
 - 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 '*Single storey outbuilding containing a garage, property entrance, study and swimming pool with materials and glazing to match the existing building. The roofline to follow the fall of the land to ensure a maximum height of the building from ground level is 2.5m at all points. Apart from the garage, which is sloping internally, the proposed ground floor is cut into the slope of the land. The principal elevation of the existing building, where the front door is located, is the east elevation.*'
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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.

Preliminary Matters

2. The description of the proposed development set out above is taken from the application form. For the Certificate however, I have adopted the more concise description on the appeal form. The Council used a similar description on its decision notice.
3. Whether an LDC should be issued is strictly a matter of fact and law. Therefore, planning merits considerations can have no bearing on my deliberations.

Main Issue

4. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that the proposal is granted planning permission by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

5. The burden is firmly on the appellant to show why an LDC should be issued, the relevant test of the evidence being on the balance of probability.
6. The appeal property contains a detached two-storey dwelling. The dwelling is reasonably modest in scale but occupies a spacious plot. The proposal involves

erecting a substantial freestanding single storey outbuilding, situated partly alongside and to the rear of the dwelling.

7. The GPDO at Article 3, Schedule 2, Part 1, Class E paragraph E.(a), grants planning permission for the provision in the curtilage of a dwelling of any building or enclosure, swimming or other pool, where it is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such'. The definition of an 'incidental purpose' set out in paragraph E.4 is not exhaustive. In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it.
8. The Government's Technical Guidance advises that a large range of buildings can fall within Class E, including garden sheds, other storage buildings and garages, as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling. It further advises that the term 'incidental' does not cover normal residential uses such as separate self-contained accommodation, or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.¹
9. Established case law confirms that in the context of a dwelling, 'required' for an incidental purpose should be interpreted as 'reasonably required' and does not rest on the unrestrained whim of a householder. The physical size of an outbuilding, alone or in comparison to a dwelling, might be an important consideration but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.²
10. The outbuilding would be 28.19m wide and 10.27m deep and would provide a study, a covered entrance, a garage and a covered swimming pool. Such activities can all reasonably be regarded as being subordinate to and connected with the running of the dwelling and as such, incidental to its enjoyment. None of those activities would be part and parcel of or integral to the ordinary use as a dwelling. The Council did not seek to argue otherwise.
11. The study would have a floor area of around 28m². For a home office or private study, this does not seem unusually large. A floor area of such size would allow for ease of provision of a desk and for accommodating stored books and folders, along with other office-related furniture and equipment, including for example a printer/scanner, chairs and shelving. It would also provide for a comfortable working environment, with good circulation space. It is unlikely that the study could be significantly reduced in size without compromising its efficient use and/or resulting in a more cramped and congested feel for users. Accordingly, the study would be of a reasonable size, having regard to what would be necessary to achieve the intended purpose.
12. The study floor area would be around half that of the ground floor of the dwelling, also equating to almost double the floor area of the living room. Even so, at around 5m away the study would be located a considerable distance from the dwelling. The extent of the physical separation from facilities required for day-to-day private

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909

existence in the dwelling, including the kitchen, dining area, WC and bathroom, would make it relatively inconvenient to utilise the study as part of the primary living accommodation. Accordingly, in my view there is a limited prospect of the study being put to other than an incidental use. This together with my other findings set out above also means that the proposal is distinguishable on its facts and circumstances from those in the appeal decision referred to.³

13. The garage would be of a size capable of accommodating a private motor vehicle. The remaining floor space in the outbuilding would be taken up by the covered entrance and the swimming pool, along with its associated circulation space and changing facility. The Council did not question the reasonableness of the size of the garage or the covered entrance. Nor did it question the reasonableness of providing a swimming pool, along with its associated circulation space and changing facility, of the size proposed. There is no sound reason why I should disagree with the Council's assessment in respect of the parts of the outbuilding to be given over to those uses. Although large in scale in relation to the dwelling, ultimately there is little firm evidence to suggest that the outbuilding would not be put to the uses described in the application.
14. Accordingly, based on the available evidence, as a matter of fact and degree and on the balance of probability, the outbuilding would not be unusually or unreasonably large having regard to the incidental roles in relation to the dwelling it is intended to serve and it would be genuinely and reasonably required for purposes incidental to the enjoyment of the dwelling. This means that paragraph E.(a) would be satisfied. Furthermore, the outbuilding would satisfy the relevant size, height and locational limitations in paragraphs E.1 to E.3 of Class E.
15. The appellant has therefore shown that the proposal is lawful for planning purposes, being granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class E.

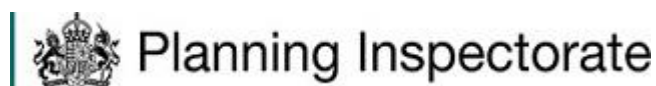
Conclusion

16. 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 for a single storey outbuilding containing a garage, property entrance, study and swimming pool with materials and glazing to match the existing building is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Stephen Hawkins

INSPECTOR

³ Appeal Ref: APP/D2320/X/23/3330340



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 21 December 2023 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:

On the available evidence and on the balance of probability, planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Stephen Hawkins

Inspector

Date: **7 March 2025**

Reference: APP/Y3615/X/24/3340338

First Schedule

Single storey outbuilding containing a garage, property entrance, study and swimming pool with materials and glazing to match the existing building (as shown on the following drawing nos: SY357104, 1:1250 scale Location Plan, 2303 EX00 Rev A, 2303 EX01 Rev A, 2303 EX03, 2303 PA40, 2303 PA41, 2303 PA42, 2303 PA43 & 2303 PA44)

Second Schedule

Land at Amberwell, Newlands Corner, Guildford, Surrey GU4 8SE

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 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: **7 March 2025**

by **Stephen Hawkins MA, MRTPI**

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Scale: Not to Scale

