



Appeal Decision

Site visit made on 7 May 2025

by **C Rafferty LLB(Hons), Solicitor**

an Inspector appointed by the Secretary of State

Decision date: 03 June 2025

Appeal Ref: APP/N4720/X/24/3357988

South View, Ling Lane, Scarcroft, Leeds LS14 3HT

- 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 Innova Projects Ltd against the decision of Leeds City Council.
 - The application ref 24/05148/CLP, dated 6 September 2024, was refused by notice dated 25 October 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 construction of outbuilding to rear of property.
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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. I have taken the description of development from the application form, removing superfluous wording.

Main Issue

3. The main issue is whether the Council's decision to refuse to issue a LDC was well founded.

Reasons

4. Section 191(2)(a) of the 1990 Act states that operations are lawful at any time if no enforcement action may then be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reason).
5. Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for those classes of development defined as 'permitted development' in Schedule 2. Class E(a) of Part 1 of Schedule 2 describes 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 as permitted development. It is proposed to construct a single storey outbuilding housing a swimming pool, plant room, changing room, and shower room within the rear garden of the appeal property.

6. There is no dispute that the development falls to be considered under Class E, that it would adhere to the limitations set out at paragraph E.1, or that it is incidental to the enjoyment of the appeal property. The Council does contend, however, that the excavation works would be of such a scale that they would comprise a separate engineering operation and would therefore fall outside of the scope of Class E. In this regard, the GPDO does not provide a definition or limitation for the permissible degree of engineering works associated with permitted development under Class E, nor indeed does the 'Permitted Development Rights for Householders: Technical Guidance'. I accept that this does not mean that no such limitation exists, but that it will be a matter of fact and degree on the circumstances of the case.
7. I viewed the appeal site during my visit. The rear garden slopes downwards from the appeal property towards the southern-most boundary of the site. However I observed that in the vicinity of the proposed building, the land becomes more level and the gradient notably less steep. In addition, on the information before me, including the sectional drawings, the necessary excavation works would relate only to the building foundations and the creation of the swimming pool, and would not extend to levelling the ground. The ground levels surrounding the building would not be altered, with all works undertaken within the footprint of the building.
8. Taking all of the above into account, even noting the sloped nature of the site and the scale of the building proposed, I do not find that the associated excavation works would be of such an extent as to amount to a separate engineering operation. There is nothing substantive before me to suggest that significant earth movements beyond the periphery of the building would be required. Overall, the works would be of a permissible level to be associated with the development of the building and thus fall within the scope of Class E.
9. Consequently, I find the development as a whole would constitute the provision within the curtilage of the dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such. It would therefore be granted planning permission by Article 3(1) of the GPDO and thus, at the date the LDC application was made, it would have been lawful within the meaning of s191(2) of the 1990 Act.

Other Matters

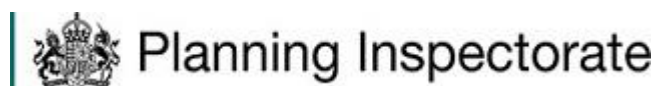
10. The Council has referenced an appeal decision which found that the associated engineering works in that case would exceed the provisions of Class E. However, on the information before me the circumstances of the site and building in that case differ significantly from that before me. I have decided the appeal before me on its own site-specific circumstances, as I am required to do.

Conclusion

11. 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 the construction of outbuilding to rear of property 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).

C Rafferty

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 6 September 2024 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 building operations would be permitted development under the provisions of Class E of Part 1 of Schedule 2 and thus granted planning permission by Article 3(1) of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

C Rafferty

Inspector

Date: **03 June 2025**

Reference: APP/N4720/X/24/3357988

First Schedule

Construction of outbuilding to rear of property.

Second Schedule

South View, Ling Lane, Scarcroft, Leeds LS14 3HT

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: **03 June 2025**

by **C Rafferty LLB(Hons), Solicitor**

Land at: South View, Ling Lane, Scarcroft, Leeds LS14 3HT

Reference: APP/N4720/X/24/3357988

Scale: Not to Scale

