
Appeal Decision

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 15 July 2025

Appeal Ref: APP/K3605/X/23/3333435

230 Brooklands Road, Weybridge KT13 0RJ

- 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 Yihua Yuan against the decision of Elmbridge Borough Council.
 - The application Ref 2023/2571, dated 14 September 2023, was refused by notice dated 13 November 2023.
 - 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 a single-storey rear outbuilding.
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Summary Decision: the appeal is dismissed

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 a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed outbuilding would comply with the limitations at Classes E.1, E.2 and E.3, and I see no reason to take a different view.
3. The area of dispute is whether the proposed outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Consideration of this issue raises two questions: is the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed outbuilding reasonably required for that purpose?

4. In terms of whether the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such, case law confirms that the keynote is reasonableness. The Courts have held that the concept of what is incidental to the enjoyment of the dwellinghouse as such involves an element of objective reasonableness and is not a matter solely at the whim of the individual owner or occupier.
5. I am satisfied that the purposes for which the proposed outbuilding would be used are generally incidental to the residential use of the main dwelling, but with one exception. This is the second WC, the floor area of which seems wholly excessive to accommodate just a toilet and hand basin.
6. The Permitted development rights for householders : Technical Guidance (Technical Guidance), published in 2019, explains that a purpose incidental to a house would not cover normal residential uses, such as primary living accommodation. This includes a bathroom. In this case, the difficulty is that the larger WC shown on the application drawings (Drawing No. P101) is comfortably of a size that could accommodate a fully functioning bathroom.
7. The appellant has provided no explanation as to why a WC of this floor area would be required in the proposed outbuilding. In the absence of an explanation, I cannot dismiss the possibility that the space could be used as a fully functioning bathroom, notwithstanding that is labelled "WC" on the application drawings. As indicated in the Technical Guidance, this would be primary living accommodation and therefore not incidental to the use of the dwellinghouse as such.
8. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E1. Nevertheless, the main dwelling as extended has a footprint of some 117m. By comparison, with a floor area of some 126.3m², the footprint of the proposed outbuilding would exceed that of the main dwelling by some 9.3m². The proposed outbuilding would therefore not be subordinate to or proportionate to the main dwelling in terms of size.
9. The appellant has not provided any explanation or justification as to why an outbuilding of the proposed footprint is required and/or why the proposed uses could not be accommodated in a smaller building. Consequently, in the absence of that explanation, as a matter of fact and degree it has not been demonstrated that the proposed outbuilding is of a size that is reasonably required for a purpose(s) incidental to the enjoyment of the dwellinghouse as such.
10. I recognise that Class E.1(b), Part 1, Schedule 2 of the GPDO indicates that development is not permitted by Class E if the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse). There is no dispute that the proposed outbuilding would occupy less than 50% of the total area of the curtilage of the dwelling and would therefore accord with Class E.1(b).

11. However, the limitation in relation to the area of ground covered by the outbuilding is just one of the limitations in Class E.1(b) to which Class E is subject. Compliance with that criteria does not indicate that the outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such. That test is set out in Class E itself, with which the proposed development must accord for it to be permitted by that Class.
12. The appellant has referred me to a number of appeal Decisions in relation to the interpretation of Class E, Part 1, Schedule 2 of the GPDO. Copies of the actual Decisions have not been provided, but it is apparent from the summaries that have been provided by the appellant that each of those Decisions turned on the particular facts and circumstances of the case. The facts and circumstances relating to this case are unique to this appeal, and by definition are different to those in the appeals cited by the appellant.
13. I note that all the Decisions referred to by the appellant are of some age, dating to 2009 or 2010. As such, with some exceptions they generally pre-date the guidance set out in the Technical Guidance, the first version of which was published in August 2010. For these reasons, particularly in the absence of the reasoning of the Inspector to arrive at his/her Decision, the summaries of the appeal Decisions provided by the appellant do not greatly assist me.
14. In summary, I am satisfied that with the exception referred to above the purpose of the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse as such. However, I am not persuaded that the proposed outbuilding would be reasonably required for that purpose by reason of its size. Accordingly, on the balance of probability, I conclude that the development proposed would not have been lawful on the date on which the application was made.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a single-storey rear outbuilding at 230 Brooklands Road, Weybridge KT13 0RJ is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Formal Decision

16. The appeal is dismissed.

Paul Freer
INSPECTOR