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# 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: 1 August 2025**

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**Appeal Ref: APP/A3655/X/25/3360994**

**7 School Cottages, Mayford Green, Woking GU22 0PN**

- 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 Centaur Estates Ltd against the decision of Woking Borough Council.
  - The application Ref PLAN/2024/0845, dated 20 November 2024, was refused by notice dated 21 January 2025.
  - 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 construction of a single storey outbuilding to provide gym and home office ancillary to existing property.
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## **Summary Decision: the appeal is dismissed**

### **Application for costs**

1. An application for costs was made by Centaur Estates Ltd against Woking Borough Council. This application is the subject of a separate Decision.

### **Procedural Matters**

2. The appellant requested that this appeal was determined on the papers and without the need for a site visit. Having reviewed the evidence that has been submitted, I am satisfied that there is no benefit to be gained from a site visit at this time. I am therefore satisfied that I can determine this appeal on the written evidence that is before me.

### **Reasons**

3. 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.

4. 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.
5. However, Class E is for the provision *within the curtilage of a dwellinghouse* for any building, etc (emphasis added). The Council's Delegated Report for the LDC application indicates that the curtilage of 7 School Cottages has been subdivided and indicates that the lawful use of the land (i.e. the land has been separated by the erection of the fence) is residential garden land in association with that property. That may well be the case but curtilage is not a use of land. The reference in the Delegated Report to the subdivision of 7 School Cottages implies (and I put it no higher than that) the creation of a separate plot or parcel of land.
6. The Existing Site Location Plan submitted with the LDC application (Drawing No. SC1-SPBP Rev 01) does not show this fence. The Existing Ground Floor Plan (Drawing No. SC1-00-SP-EX Rev 01) does show a wall or a fence extending from the west boundary of the site to an existing outbuilding of some description, but this wall or fence does not sub-divide the garden as described in the Delegated Report. I am therefore not convinced that this is the fence referred to in the Delegated Report. The appellant's Final Comments, which comment on the Delegated Report in some detail, are entirely silent on this point.
7. There is no all-encompassing, authoritative definition of the term 'curtilage'. The matter has been the subject of extensive case law over the years, but the main principles derived from that case law have been distilled in the judgment of the High Court in *Challenge Fencing Ltd. v SSHCLG* [2019] EWHC 553 (Admin). Having regard to the principles set out in *Challenge Fencing*, on the limited information that is before me I am not satisfied that as a matter of fact and degree the land on which the proposed outbuilding would be sited is in the curtilage of 7 School Cottages. It follows that if this were to be the case the proposed outbuilding would not be permitted by Class E, Part 1, Schedule 2 of the GPDO.
8. For the avoidance of any doubt, I make no finding on this point. That will be a matter for the local planning authority in the first instance. Nonetheless, I cannot find that the proposed outbuilding would be permitted by Class E, Part 1, Schedule 2 of the GPDO without first reaching a conclusion on that point, and I do not have enough information before me to do so.
9. Had this been the only reason not to issue an LDC, I would have course reverted to the parties to seek their views and would have made arrangements to visit the site to assess for myself the situation on the ground. However, for the reasons set out below, this is not the only reason and accordingly I have not done so. It is to those other reasons that I now turn.

10. The area of dispute is whether the proposed outbuilding would be reasonably 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?
11. It was held in *Emin v Secretary of State for the Environment* that, in terms of whether the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such, the keynote is reasonableness<sup>1</sup>. 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.
12. I am satisfied that the purposes for which the proposed outbuilding would be used could reasonably be considered incidental to the residential use of the main dwelling, but with one exception. This is the shower room, as shown on Drawing No. SC1-00-SP2 Rev 01.
13. 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 so-called 'shower room' is of a size that could accommodate a fully functioning bathroom. Indeed, the shower room provides all the facilities required for a functional bathroom in terms of a shower, toilet and hand basin.
14. In their Final Comments, the appellants point out that the shower room has a GIA of only some 3.23m<sup>2</sup> and is therefore of a size that would only just be able to accommodate a 750mm quadrant corner shower. The appellants also indicate the shower room has been drawn as indicative only.
15. The appellants argue that a shower located in the vicinity of the home gym is entirely incidental to the use of the gym and is there for the sole benefit of the occupants of the main dwellinghouse enjoying the facilities provided by the gym. The appellants also argue that it would be entirely unreasonable to suggest that the family using the office and home gym should not have access to a functional toilet within the outbuilding. As a matter of principle, I accept both points. However, the salient point is that in his case the shower and toilet (plus a hand basin) have all been provided in one room to form what is, as a matter of fact and degree, a bathroom. That constitutes primary living accommodation for the purposes of the Technical Guidance and consequently is not a purpose incidental to the dwellinghouse as such.
16. The judgement in *Emin* also confirms that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E.
17. The proposed floor plans show a single storey building with an internal floor area of 63m<sup>2</sup> and a footprint of 75.5m<sup>2</sup>. By comparison, the existing ground floor of the main dwelling measures some 111m<sup>2</sup> and first floor at some 65m<sup>2</sup>, resulting in total GIA for the main dwelling of some 176m<sup>2</sup>. Purely on the basis of floor area, I am satisfied that the proposed outbuilding would be subordinate to the main dwelling.

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<sup>1</sup> *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

18. Nevertheless, some of the accommodation within the proposed outbuilding to my mind appears excessive in floor area. For example, it is generally accepted that a home office can be incidental to the main dwelling. However, in this case the proposed office has GIA of some 11m<sup>2</sup>. As shown on Drawing No. SC1-00-SP2, the proposed office is illustrated as having two desks equating to a common desk size of 1800mm long and 750mm wide. The appellants argue that it is not unreasonable to provide space for two desks as both adult occupiers need their own office space. Again, as a matter of principle I concur with that view.
19. The difficulty in this case is that there is a considerable amount of circulation space around the two desks that are shown. I recognise that an office reasonably required in connection with the occupier's business or employment (i.e. working from home as opposed to for purely domestic use) may necessitate filing cabinets, etc in connection with that use. However, there is no evidence before me that this is the case for one or both of the adult occupiers of the appeal property. Absent that evidence, the floor area of the proposed office is excessive for purposes incidental to a dwellinghouse as such.
20. The proposed home gym has a floor area of 37.58m<sup>2</sup>. The appellants explain that it is designed to serve the occupiers of the appeal property, who are a family of five. The indicative design accommodates a free-weights area plus 2 treadmills, and is also capable of storing a running machine and a bicycle side by side. Given the number of occupants, this amount of gym equipment is reasonably required for purposes incidental to a dwellinghouse as such.
21. The difficulty again is the amount of circulation space that surrounds that equipment. There is a central 'spine' of circulation space that extends between the entrances at the north and south elevations of the building, plus some further free space above the treadmills. I acknowledge that the layout and spacing of the gym equipment shown on Drawing No. SC1-00-SP2 is purely indicative. Nevertheless, it has not been shown that this amount of gym equipment could not be accommodated in a smaller space with a more efficient layout and that the amount of space shown is reasonably required. It follows that on the evidence before me the floor area of the proposed gym is excessive for purposes incidental to this particular dwellinghouse.
22. On a similar theme, the proposed utility room has a GIA of some 2.3m<sup>2</sup>. The purpose of this utility room is not entirely clear to me. There is also a separate cupboard proposed which would be entirely suitable to store towels, etc in association with gym, as well as for smaller pieces of gym equipment. I recognise that the utility room could be used to accommodate 'white goods', which in principle could be incidental to the main dwelling. However, I have been provided with no information as to whether the main dwelling already features a utility room and therefore whether an additional utility room (of any size) would be reasonably required in the proposed outbuilding.
23. The appellant asserts that it is not unreasonable for gym and office users to have access to running water and an ability to make a hot or cold drink without having to traverse to the main dwelling next door. This implies that the utility room may be intended to serve as a kitchen or kitchenette of some description. Again, the Technical Guidance indicates a kitchen is primary living accommodation and would not be a purpose incidental to the enjoyment of a dwellinghouse as such.

24. As it stands, on the information that is before me, I am unable to conclude that the proposed utility room is reasonably required for purposes incidental to this particular dwellinghouse. I therefore consider the proposed utility room to be wholly excessive for that purpose.
25. The appellant refers to an LDC granted by the Council in April 2012 for the erection of two single-storey outbuildings at 10 School Cottages, Mayford Green (Council Ref: PLAN/2011/1106). The larger of the two outbuildings proposed was for a garage/workshop, the smaller for a garden store. It follows that the considerations as to whether those outbuildings were reasonably required for purposes incidental to that particular dwellinghouse are entirely different to the considerations now before me: for example, whether the space required to accommodate the vehicles owned by the occupiers of 10 School Cottages raised a very different assessment of the space required. For that reason, the granting of that LDC does not provide any justification for the development now proposed at 7 School Cottages.
26. In the event, the proposal found to be lawful by the LDC granted in April 2022 was never implemented. Instead, the owner of 10 School Cottages erected a single outbuilding providing a gym, an office and a WC. An LDC for the retention of that outbuilding was granted by the Council in April 2013 (Council Ref: PLAN/2012/1206). The appellant calculates that the floor area of the gym element alone amounts to some 36.37m<sup>2</sup>, practically identical to the floor area of 37.58m<sup>2</sup> of the gym in outbuilding proposed in this case.
27. There is, however, a significant difference in the configuration of the respective spaces. The gym found to be lawful in relation to 10 School Cottages is broadly square in shape. There is some circulation space around the gym equipment but not excessively so. By contrast, the layout of the gym proposed in this case is of irregular shape with excessive circulation space. Consequently, although of comparable floor area, the more efficient layout of the gym at 10 School Cottages clearly demonstrates that the space is reasonably required for purposes incidental to the dwellinghouse. Not so the internal layout of the gym proposed at 7 School Cottages.
28. As an aside, I also note that the office and WC found to be lawful as part of the outbuilding at 10 School Cottages are of considerably smaller floor area than the equivalent spaces in the outbuilding now proposed at 7 School Cottages. I note in particular that the WC proposed is just that, with no shower being included. It follows that the WC in isolation would not constitute primary living accommodation for the purposes of the Technical Guidance.
29. For these reasons, I consider that the outbuilding as constructed at 10 School Cottages and found to be lawful does not act as a precedent for the outbuilding that is now proposed at 7 School Cottages and does not provide justification for it.
30. The appellants have referred me to two Appeal Decisions relating to the interpretation of Class E, Part 1, Schedule 2 of the GPDO, including an appeal in which an LDC was granted for a detached outbuilding at a residential property in Slough, Berkshire (APP/J0350/X/20/3244396). The outbuilding found to be lawful in that case was considerably larger than that now proposed in relation to 7 School Cottages, having a floor area of some 66.87m<sup>2</sup>. On the other hand, at some 145m<sup>2</sup> the floor area of the host dwelling was somewhat smaller than the floor area of the host property in this case.

31. The key difference is in the accommodation provided by the respective outbuildings. In the Slough case, the outbuilding proposed a gym, a storeroom and a games room. The dispute in that case was solely in relation to the latter which, at some 40.1m<sup>2</sup>, was considered by the Council to be excessive. Through evidence, the appellant was able to demonstrate that this space was reasonably required to accommodate a snooker table, that being the intended purpose of the games room. The Inspector concluded that this was a reasonable requirement and that the games room would not be excessively large for its intended purpose.
32. It follows that the Slough appeal was determined on the facts and circumstances relating to the outbuilding then proposed. It is axiomatic that those same facts and circumstances do not apply in this case. The Slough case can therefore be distinguished on its facts and does not provide justification for the outbuilding now proposed.
33. The appellant also refers to an older appeal Decision in which an LDC was granted for a residential outbuilding at a residential property in Stanstead Abbots, Hertfordshire (APP/J1915/X/08/2088016). In that case, the proposed outbuilding included a garden room, a gymnasium/games room and a double garage. Again, that necessitated a very different assessment of the space required and whether that space was reasonably required for purposes incidental to the enjoyment of that particular dwellinghouse. I also note that this appeal pre-dated the publication of the Technical Guidance, the first version of which was published in August 2010. For these reasons, the Hertfordshire appeal Decision may also be distinguished on its facts and does not provide justification for the outbuilding now proposed.
34. 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 satisfied at this time that the proposed outbuilding is within the curtilage of the dwelling known as 7 School Cottages and am not persuaded that the proposed outbuilding would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such 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**

35. 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 outbuilding at 7 School Cottages, Mayfield Green, Woking GU22 0PN 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**

36. The appeal is dismissed.

*Paul Freer*  
INSPECTOR