
Appeal Decision

Site visit made on 1 July 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 10 October 2025

Appeal Ref: APP/A1910/X/24/3344423

Grey mantle, Hempstead Road, Bovington, Hemel Hempstead HP3 0HF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) 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 Kedgling Developments Ltd against Dacorum Borough Council.
 - The application ref 23/02937/LDP is dated 4 December 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 two outbuildings.
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Decision

1. The appeal is dismissed.

Application for costs

2. An application for costs was made by Kedgling Developments Ltd against Dacorum Borough Council. This application is the subject of a separate Decision.

Main Issue

3. The main issue in this appeal is whether it has been shown that planning permission is granted for the proposal by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) at Article 3(1), Schedule 2, Part 1, Class E.

Reasons

4. The appeal property contains a substantial detached two storey dwelling. It is proposed to erect two freestanding single storey residential outbuildings towards the end of the rear garden, which is L-shaped and partly wraps around the end of neighbouring residential gardens. One of the proposed outbuildings would provide a swimming pool and gym with a sauna and shower/changing area, with the other outbuilding providing a snooker/games room.
5. The burden is firmly on the appellant to show that an LDC should be issued for the proposal, the relevant test of the evidence being on the balance of probability. Whether an LDC should be issued is strictly a matter of fact and law, so planning merits considerations are not before me.
6. The GPDO, Article 3(1) at Schedule 2, in Part 1, Class E, paragraph E.(a), grants planning permission for the provision within 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 dwelling as such. There is no dispute that the

proposed outbuildings would be located within the curtilage of the dwelling, that the relevant limitations in paragraph E.1 would all be met and that paragraphs E.2 and E.3 do not apply in this instance. I concur.

7. 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. Established case law¹ makes it clear that '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 relation to a dwelling, is not conclusive. Regard should be had to the use to which it is proposed to put the building and to the nature and scale of that use. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the building would be genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
8. The Council have previously granted an LDC under s192 of the Act for two proposed freestanding outbuildings in the curtilage of the dwelling (the LDC scheme).² The proposed swimming pool, gym and sauna outbuilding would occupy a similar siting to a structure in the LDC scheme which would have accommodated a similar range of uses. The proposed snooker/games room would occupy a similar siting to the triple garage in that scheme.
9. The recreational uses to be accommodated within the outbuildings would fall within the range of activities that could reasonably be regarded as being subordinate to and connected with the domestic and leisure activities of persons living in the dwelling and as such, incidental to its enjoyment. The combined floor area of the outbuildings would be less than half that of the dwelling, as enlarged pursuant to a recent planning approval³.
10. The footprint of the swimming pool, gym and sauna outbuilding would be around 10% greater than in the LDC scheme. An LDC under s192 is not the equivalent, in law, of a planning permission; it simply provides that the matter stated would be lawful at the date of the application. Even so, in the context of the LDC scheme and given the absence of any material change in circumstances in the intervening period which might warrant finding otherwise, in my view, as a matter of fact and degree, the swimming pool, gym and sauna outbuilding would be genuinely and reasonably required for purposes incidental to the enjoyment of the dwelling and so would satisfy paragraph E.(a).
11. Turning to the second outbuilding, information supplied with the appeal showed that at around 6.7m by 4.9m measured internally, the snooker room would provide the minimum floor area capable of accommodating a full-size snooker table whilst allowing for comfortable play. Information supplied also showed that no rooms in the enlarged dwelling would be physically capable of accommodating a full-size snooker table.
12. Nevertheless, the second outbuilding would be of considerable size, having a floor area similar to that of the swimming pool, gym and sauna outbuilding. As well as

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

² Council Ref: 21/04703/LDP

³ Council Ref: 24/01300/NMA

the snooker room, the second outbuilding would also contain areas for other activities – a darts area, along with another games area and a bar. Together, these other areas would account for a considerable portion of the outbuilding floor space, not falling far short of that provided for the snooker room and approaching half the total floor space. Apart from the snooker room, there is little explanation concerning the size of the floor space of the areas in the second outbuilding and how this relates to the incidental purposes they are proposed to serve.

13. Moreover, it is unclear whether the darts area, other games area and bar would replicate or replace, either partly or wholly, similar provision in the enlarged dwelling or could otherwise reasonably be accommodated in the dwelling. The drawings supplied, which show a games room of substantial size on the ground floor of the enlarged dwelling, along with generously sized dining and drawing rooms capable of accommodating a bar with ease, reinforce my reservations in this respect. As a result, there is little assurance that the second outbuilding would not be considerably larger than is necessary for the uses it is intended to contain.
14. Drawing these matters together, based on the available evidence, in the particular circumstances of this case and as a matter of fact and degree, I am not persuaded that the second outbuilding would be genuinely and reasonably required to accommodate the proposed activities and so achieve the purpose of being incidental to the enjoyment of the dwelling as such. It follows that the appellant has been unable to show, on the balance of probabilities, that the proposal would reasonably be required for a purpose incidental to the enjoyment of the dwelling. The proposal would not, therefore, be granted planning permission by Article 3(1), Schedule 2 Part 1, Class E of the GPDO.
15. In reaching the findings set out above, I have also considered whether the appeal could be allowed in part only, by granting an LDC in respect of the proposed swimming pool, gym and sauna outbuilding. However, in doing so it would be difficult to specify the proposed operations with the necessary degree of precision to avoid uncertainty.

Conclusion

16. For the reasons given above I conclude that, had the Council refused to grant a certificate of lawful use or development in respect of two outbuildings that refusal would have been 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).

Stephen Hawkins

INSPECTOR