



Appeal Decision

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2025

Appeal Ref: APP/B0230/X/23/3327975

29 Limbury Road, Luton LU3 2PH

- 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 Mr Manwar Hussain against the decision of Luton Borough Council.
 - The application ref 23/00610/LAWP, dated 30 May 2023, was refused by notice dated 27 July 2023.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
 - The development for which an LDC is sought is construction of detached outbuilding, reduction of ground level around building, construction of paths and retaining wall.
-

Decision

1. The appeal is dismissed.

Preliminary Matters

2. Determination of the appeal requires an assessment of the proposed development against the provisions of The Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO). The proposed development is shown on drawings submitted with the application. In these circumstances visiting the site is unnecessary. The appeal has been determined without undertaking a site visit.
3. An application for costs has been made by the Appellant against the Council. This application is the subject of a separate Decision.

Reasons

4. 29 Limbury Road is a two storey dwelling. When the appeal application was submitted it had four bedrooms but planning permission has been obtained to add two further bedrooms at first floor level over a flat roofed kitchen/breakfast room. The property has a forecourt parking area and a long rear garden. A one metre wide access to the rear garden from the forecourt is alongside the west elevation of the dwelling. The east elevation is on the boundary to the neighbouring property, no. 31.
5. Under Class E of Part 1 of Schedule 2 of the GPDO the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse is permitted development, subject to limitations set out in paragraph E.1. The Council does not dispute that the proposed outbuilding would be built in the curtilage of the dwellinghouse. They claim, however, that the outbuilding would not be for a purpose incidental to the enjoyment of the dwellinghouse.
6. The judgement in *Emin v SSE [1989] JPL909* confirmed that regard should be had not only to the use to which the building would be put, but also to the nature and scale of that use in the context of whether it was for a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwelling

might be part of that assessment but is not in itself conclusive. The fundamental question is whether the building is genuinely and reasonably required or necessary to accommodate the proposed use and thus to achieve the intended purpose.

7. The proposed building would be 5 metres wide and 8 metres long and would comprise a small lobby, a shower room with toilet and wash basin, and a playroom/gym. The floor size of the original dwelling is not a relevant matter and, when considering the application, the Council misunderstood the proposed location of the building relative to the dwelling, though this is also not a particularly relevant matter. A playroom/gym of modest size, for use in connection with occupation of a probable 6 bedroom dwelling, which would retain a generous garden, can objectively be regarded as being for a purpose that is incidental to the enjoyment of the dwellinghouse.

8. Development is not permitted under Class E if, with regard to paragraph E.1(e), the height of the building would exceed 2.5 metres in the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse. Ground levels would be reduced by about 0.5 metres and the building would be within this excavated area. The Appellant maintains that the building would not exceed the height limitation as this would be measured from ground level outside of the excavated area.

9. The Government has published Technical Guidance for Part 1 of Schedule 2 of the GPDO. Within regard to limitation (e) it is stated that the "...height of the building...should be measured from the highest ground level immediately adjacent to the building..."; the crucial word being 'immediately'. The building would, from application drawings, be surrounded by a level paved pathway and the flat roof of the building would be about 3 metres above the pathway.

10. The wording of the GPDO, which is supported and substantiated by the Technical Guidance, must be taken literally. The proposed building would be over 2.5 metres in height measured from the highest ground level immediately adjacent to the building. The proposed development does not satisfy the height limitation of paragraph E.1(e) and would not therefore be development permitted under Class E of Part 1 of Schedule 2 of the GPDO.

11. The proposed development includes 'reduction of ground level around building'. This element of the development would require the removal of about 38 cubic metres of ground material. In any circumstances, the removal of such a quantity of material is an engineering operation in its own right. There are no provisions within the GPDO that permits such development within the curtilage of a dwellinghouse. For this reason also the proposed development is not permitted under Part 1 of Schedule 2 of the GPDO.

12. For the reasons given the Council's refusal to grant an LDC was well-founded and the appeal fails. The powers transferred in section 195(3) of the 1990 Act as amended have been exercised accordingly.

John Braithwaite

Inspector