



Appeal Decision

Site visit made on 3 December 2025

by **David Jones BSc (Hons) MPlan MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 21 January 2026

Appeal Ref: APP/P4225/X/24/3352705

1 Ramsden Farm, Roundthorn Road, Middleton M24 1ZB

- 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 Marcel Duffy against the decision of Rochdale Metropolitan Borough Council.
 - The application ref 24/00494/CPL, dated 23 May 2024, was refused by notice dated 25 July 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 a detached building to house swimming pool.
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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 development which is found to be lawful.

Preliminary Matters

2. The application sought is a certificate of lawfulness for a proposed development. The purpose of an application made under section 192 is to find out whether proposed development, as described in the application form and shown on the drawings, would be lawful if instituted or begun at the time of the application. It is not the equivalent, in law, of a planning permission. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
3. I have taken the description of the proposed development from the Council's decision notice as it provides a more accurate description than that outlined on the application form.

Main Issue

4. The main issue is whether the decision by the Council to refuse to grant an LDC was well-founded. This turns on whether the proposed detached building would benefit from planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").
5. There is no disagreement between the parties that the building would comply with the size and other limitations within paragraph E.1 of Class E, and I concur with that view. The single point of debate is whether the proposed building would meet the requirement of E(a) that it would be *"required for a purpose incidental to the enjoyment of the dwellinghouse as such"*.

Reasons

6. 1 Ramsden Farm is located on a private road and is a large, detached dwelling set within a relatively large plot. The proposed detached outbuilding would be within the curtilage of the dwellinghouse and would house a swimming pool, WC and changing room, sauna, pump room, and storage room. Despite meeting the various size and locational limitations of Class E, the Council maintains that the appellant has not demonstrated that the building is required for purposes incidental to the enjoyment of the dwellinghouse.
7. In reaching this conclusion, the Council has considered the proposed development in combination with a separate proposed outbuilding that was previously granted a LDC by the Council on 12 September 2023¹ ("the 2023 LDC"). The Council contend that the two outbuildings should be considered in combination since the degree of separation between the two structures would be so small that it would be de-minimis, and they would be viewed as a single structure.
8. In assessing the overall scale of the two outbuildings, the Council has compared the combined footprint of the two outbuildings to that of the existing dwelling. The Council state that the outbuildings would have a combined footprint of around 252.12sqm which, when compared to the host dwelling which has a footprint of approximately 136.2sqm, would not be subordinate and would take the proposal outside the definition of a building reasonably required for purposes incidental to the enjoyment of the dwellinghouse.
9. However, none of the limitations or conditions within Class E of the GPDO state that the footprint of an outbuilding cannot be similar to, or greater than, that of the host dwelling. In *Emin v SSE and Mid Sussex District Council [1989] 58 P & CR 416* it was established that whilst the size of the building may be an important consideration when determining if a building is to be used incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive. In particular, it must also be established that the outbuilding is genuinely and reasonably required, and in *Wallington v Secretary of State for Wales [1991] 1 PLR 87* it was established that a purpose incidental to a dwellinghouse should not rest on the whim of the person who dwelt there.
10. In any event, I am unclear why the Council have considered the development in combination with that proposed under the 2023 LDC. Firstly, it is stated in the Planning Officer's report that "*Originally, the plans indicated that the proposed outbuilding would form an extension of the approved outbuilding*" and that following the submission of amended plans "*the applicant has requested that the proposed outbuilding be considered in isolation, rather than as a combined development with the approved outbuilding*". The application form and the submitted drawings also support this position.
11. During my site visit I observed that the outbuilding proposed under the 2023 LDC had not been built, nor had any works commenced in relation to it. It is therefore clear that it was not in existence at the time when the most recent LDC application was made. There is also no guarantee that the 2023 LDC development will be constructed in the future. The proposed detached building to house a swimming pool must therefore be assessed on its own merits, and it determined whether the development would be lawful if instituted or begun at the time of the application.

¹ Council Ref: 23/00799/CPL

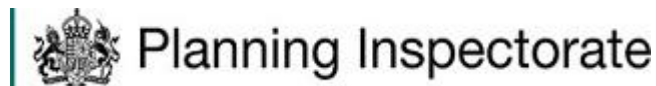
12. In terms of the proposed building before me, given the size of the plot and the absence of any other built form within the rear garden of the property, I do not find the overall size and scale of the building to be excessive. The rooms containing the sauna, WC and changing room, storage, and pump rooms are all modest in size and could not realistically be made much smaller. Similarly, the swimming pool itself is of reasonable size for a private residential dwelling and the buildings overall height would not exceed 2.5 metres. The swimming pool and other facilities in the building would be for the personal use of the appellant and his partner.
13. The footprint of the building would be similar to that of the existing dwelling, however in my view the intended uses are incidental to the enjoyment of the dwellinghouse, and the scale of the outbuilding is no more than it needs to be. There is also no evidence to indicate that the proposed building rests on the “whim” of the appellant. Accordingly, I am satisfied on the evidence available to me that, at the time of the application, the proposed building would be lawful under Class E of the GPDO.

Conclusion

14. 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 in respect of the was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones

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 23 May 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse and therefore meets the requirements and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). Planning permission for the development is therefore conferred by Article 3(1) and Class E of Schedule 2, Part 1 of the GPDO.

For clarity, this certificate relates only to the operations referred to in the First Schedule below and does not establish whether any other proposed operations on the land would be lawful.

Signed

David Jones

Inspector

Date: 21 January 2026

Reference: APP/P4225/X/24/3352705

First Schedule

Erection of a detached building to house swimming pool

Second Schedule

Land at: 1 Ramsden Farm, Roundthorn Road, Middleton M24 1ZB

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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 this decision dated: 21 January 2026

by David Jones BSc (Hons) MPlan MRTPI

Land at: 1 Ramsden Farm, Roundthorn Road, Middleton M24 1ZB

Reference: APP/P4225/X/24/3352705

Scale: Not to Scale

