



Appeal Decisions

Site visit made on 27 June 2023

by James Blackwell LLB (Hons) PGDip

an Inspector appointed by the Secretary of State

Decision date: 8th August 2023

Appeal A Ref: APP/D3640/X/22/3293629

20 The Avenue, Chobham, Woking GU24 8RU

- 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 Ross Van der Sloot and Kelly Harris against the decision of Surrey Heath Borough Council.
 - The application ref 21/0200/CES, dated 15 February 2021, was refused by notice dated 26 October 2021.
 - 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 "erection of a single storey outbuilding to be used as a gym, home office, WC and play room".
-

Appeal B Ref: APP/D3640/X/22/3293630

20 The Avenue, Chobham, Woking GU24 8RU

- 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 Ross Van der Sloot and Kelly Harris against the decision of Surrey Heath Borough Council.
 - The application ref 21/1215/CES, dated 3 November 2021, was refused by notice dated 19 January 2022.
 - 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 "erection of garden outbuilding".
-

Summary Decisions

1. Appeal A and Appeal B are allowed and certificates of lawful use or development are issued, in the terms set out below in the Formal Decisions.

Formal Decisions

Appeal A

2. 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.

Appeal B

3. 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.

Background and Preliminary Matters

4. Permitted development rights for certain outbuildings are conferred by Article 3(1) and Class E of Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). Specifically, and subject to certain conditions, Class E permits the provision of any building or enclosure required for a purpose incidental to the enjoyment of a dwellinghouse as such.
5. Appeals A and B each seek a LDC in connection with a proposed outbuilding, on the basis of the permitted development rights conferred by Class E. The development pursuant to Appeal A formed part of a larger development, which included an extension and alterations to the main dwelling at the appeal site. The Council issued two separate decisions in respect of this application, one granting a LDC in connection with the extension and alterations to the main dwelling, and one refusing a LDC for the proposed outbuilding. Appeal A has therefore been brought in connection with the refusal of the outbuilding.
6. Appeal B relates to a standalone application for a proposed outbuilding. Whilst the outbuilding would be sited in a different part of the garden pursuant to this application, the building would otherwise be similar to the outbuilding sought under Appeal A. Given that the issues are essentially the same in respect of both appeals, I have dealt with them in a single decision.
7. For the purpose of the Appeal A banner heading and LDC, I have taken the description of development from the Council's decision notice. This is because the description in the original application primarily refers to the extension and alterations to the main dwelling. The revised description therefore ensures clarity in terms of the proposed development that would be considered lawful pursuant to this appeal.
8. Despite repeated requests, the Council has failed to submit a statement of case or officer report in respect of either appeal. Notwithstanding the appellant's evidence, the primary commentary from the Council with regard to its reasons for refusal is therefore limited to the decision notices of each appeal. Nonetheless, these make it clear that the Council considers the proposed outbuilding would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse, on account of its size and scale. This forms the basis of the main issue for both appeals.
9. As these appeals relate to an application for a Lawful Development Certificate, the planning merits of the proposed development are not relevant. It is also important to highlight that the burden is on the appellant to demonstrate, on the balance of probability, that the relevant criteria of the permitted development rights conferred by Article 3(1) and Class E of Part 1, Schedule 2 of the GPDO have been met with regard to the proposal.

Main Issue

10. In this context, the main issue is whether the development is required for a purpose incidental to the enjoyment of the main dwellinghouse as such.

Reasons

11. For development to fall within the parameters of Class E, the ground area covered by any outbuildings, to include any outbuildings pursuant to a

proposed development, must not exceed 50% of the total area of the curtilage of the property, excluding the ground area of the original dwelling. As per the GPDO, it is therefore the ratio of built form with regard to the extent of curtilage that is important, and not the dimensions of the proposed outbuilding in themselves. This reflects the principle established in *Emin*¹, in which it was held that the size of an outbuilding is not conclusive in terms of whether it can benefit from the Class E permitted development rights.

12. In this instance, the appeal site comprises a detached dwelling with a substantial garden to its rear. Given the close physical and functional relationship between the garden and the main dwelling, it is clear the garden forms part of the property's curtilage. In both Appeals A and B, the development would leave the vast majority of the curtilage to the appeal property as domestic garden, thereby falling comfortably within the 50% footprint restriction prescribed by Class E.
13. The appellants have also cited a number of appeal decisions in support of their case, where much larger outbuildings than currently proposed have been permitted, or where the footprint of the outbuilding exceeds the footprint of the main dwelling. These appeal decisions support the principle that the specific dimensions of an outbuilding are not determinative in terms of whether a development would fall within the parameters of Class E. Instead, what is critical is whether the proposed building would be genuinely and reasonably required to accommodate the proposed use.
14. In this instance, the proposed outbuilding would accommodate a home office, playroom, gym and WC. Such uses are not uncommon domestic uses, and could all be considered incidental to the enjoyment of the main dwelling. In terms of size, both the home office and the WC are modest. The playroom would be large enough to accommodate a pool table with circulation space, together with a couple of chairs. The gym would be large enough to accommodate approximately 4 pieces of gym equipment, together with a pair of yoga mats. In respect of each of these rooms, the size seems reasonable and proportionate for their intended purpose, without being excessive.
15. Moreover, there would be insufficient space within the main dwelling for these incidental uses to be comfortably accommodated, particularly with respect to the larger rooms of the outbuilding, being the home gym and play room. Notwithstanding the three bedrooms upstairs, the primary living space of the main dwelling is currently limited to a kitchen/diner, lounge and W.C. Whilst the approved extension will increase the size of this living space, the additional floorspace would not be sufficient to accommodate each of these additional uses.
16. On the evidence before me, I am therefore satisfied that either of the proposed outbuildings would be genuinely and reasonably required to accommodate the proposed uses, each of which would be incidental to the enjoyment of the main dwelling.

Other Matters

17. I have reviewed the proposals against all other conditions and requirements of Class E, and am satisfied that the development would fall within the relevant

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

parameters in order to benefit from the associated permitted development rights.

18. Whilst the siting and orientation of the proposed outbuilding differs between Appeal A and Appeal B, this factor does not impact on whether or not the proposal meets the parameters prescribed by Class E. My conclusions are therefore the same in respect of both appeals.
19. Nonetheless, in line with s192(4) of the 1990 Act, I should highlight that my decisions are made based on each of the proposals as at the date of the relevant application. For both Appeals A and B, the respective application plans only show one outbuilding, and in neither case had any other outbuilding begun construction on the relevant date. Therefore, whilst each development has been considered lawful, this is only on the basis that one outbuilding would come forward (notwithstanding that the appellants will have a choice as to where this outbuilding is sited). Beginning the construction of one outbuilding might constitute a material change in the matters relevant to determining the lawfulness of the other, and if so, would rebut the otherwise conclusive presumption of the certificate I am granting. Put another way, my findings do not mean that two separate outbuildings would meet the parameters of Class E, and therefore be considered lawful.

Conclusion

20. On the available evidence, the development pursuant to Appeal A and Appeal B would each meet the conditions prescribed by Class E of Schedule 2, Part 1 of the GPDO. Each proposal would therefore benefit from the permitted development rights conferred by Article 3(1) and Class E of Part 1, Schedule 2 of the GPDO. I therefore conclude that the Council's refusal to grant a certificate of lawful use or development in respect of both appeals was not well-founded and that the appeals should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

James Blackwell

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 15 February 2021 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(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Construction of no other outbuilding having been begun on the date of the application, the proposed development would meet the requirements and conditions of Class E, Schedule 2, Part 1 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.

Signed

James Blackwell

Inspector

Date: 8th August 2023

Reference: APP/D3640/X/22/3293629

First Schedule

Erection of a single storey outbuilding to be used as a gym, home office, WC and play room as shown on drawing FLU.1195.3.04 (Proposed Site Layouts & Location Plan); and drawing FLU.1195.3.07 (Proposed Out Building Floor Plans and Elevations).

Second Schedule

Land at 20 The Avenue, Chobham, Woking, Surrey, GU24 8RU

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, would not be 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 use or 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 the Lawful Development Certificate dated: 8th August 2023

by James Blackwell LLB (Hons) PGDip

Land at: 20 The Avenue, Chobham, Woking, Surrey, GU24 8RU

Reference: APP/D3640/X/22/3293629

Scale: Not to Scale



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 3 November 2023 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(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Construction of no other outbuilding having been begun on the date of the application, the proposed development would meet the requirements and conditions of Class E, Schedule 2, Part 1 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.

Signed

James Blackwell

Inspector

Date: 8th August 2023

Reference: APP/D3640/X/22/3293630

First Schedule

Erection of a garden outbuilding as shown on drawing FLU.1195.4.02 (Proposed Site Layouts & Location Plan); and drawing FLU.1195.4.03 (Proposed Out Building Floor Plans and Elevations).

Second Schedule

Land at 20 The Avenue, Chobham, Woking, Surrey, GU24 8RU

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, would not be 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 use or 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 the Lawful Development Certificate dated: 8th August 2023

by James Blackwell LLB (Hons) PGDip

Land at: 20 The Avenue, Chobham, Woking, Surrey, GU24 8RU

Reference: APP/D3640/X/22/3293630

Scale: Not to Scale

