

## Appeal Decision

No site visit made

by **Ian Currie BA MPhil MRICS MRTPI**<sup>(Retired)</sup>

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 9 January 2014

---

**Appeal Ref:- APP/B9506/X/13/2195174**

**Land at Keyhaven House, Saltgrass Lane, Keyhaven, Lymington, Hants, SO41 0TQ**

- 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 lawful development certificate (LDC).
- The Appeal is made by Mr and Mrs Adam Gosling against the decision of the New Forest National Park Authority.
- The application, Ref:- 12/97938 dated 15 October 2012, was refused by notice dated 24 January 2013.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The development for which a lawful development certificate is sought is described on the application form as the proposed construction of a single-storey outbuilding within the residential curtilage of the existing dwelling.

**Summary of decision:- The appeal is allowed and a lawful development certificate is granted.**

---

### Preliminary matters

1. An application for costs was made by Mr and Mrs Adam Gosling against the New Forest National Park Authority (the Authority). This application is the subject of a separate Decision.
2. For the avoidance of doubt, I should explain that the planning merits of any future use or operations are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.

### Main Issue

3. I consider that the main issue is whether the Authority's decision to refuse to grant a lawful development certificate was well-founded. Where a LDC is sought, the onus of proof is on the appellants and the standard of proof is the balance of probabilities.
-

## Planning History

4. Demolition of glazed porch and single-storey service wing (application for conservation area consent made to the authority under reference 11/96883) – consent granted on 8 December 2011.
5. A planning application for a two-storey side extension (demolition of single-storey wing and porch), made to the Authority under reference 11/96882, was refused permission on 8 December 2011. A subsequent appeal (Ref:- APP/B9506/A/12/2167766), made under section 78 of the Town and Country Planning Act 1990, was allowed on 26 June 2012 and planning permission was granted subject to conditions.
6. Among these was condition 8, which reads as follows:- *Notwithstanding the provisions of Classes A, B, C, D and E of Schedule 2 Part 1 and Class A of Schedule 2 Part 2 of the Town and Country Planning (General Permitted Development) Order 1995 (sic) (or any order revoking, re-enacting or modifying that Order), the dwelling shall not be extended, and no building, enclosure or means of enclosure, or container, shall be constructed within the curtilage of the dwelling, unless permission has first been granted by the local planning authority.*
7. The reason given for imposing this condition is set out in paragraph 19 of the decision. This says, *"To protect the character of the National Park from additional development at the appeal site, it is necessary to impose a condition removing permitted development rights for extensions and alterations to the dwelling house, and the construction, of buildings, containers, enclosures or means of enclosure within the curtilage."*
8. No start has been made on implementing this permission allowed by the section 78 appeal, so the terms of this condition currently do not bite on the appeal premises for the purposes of this decision.

## Reasons

9. There is agreement between the main parties, with which I concur, that the dimensions and siting of the building, shown on the submitted drawings, comply with all of the limitations and conditions set out in Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 1995 (GPDO) , as amended by the Town & Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008 (GPDO 2008).
10. Of particular note is compliance with the limitations E.2 and E.3, which apply, among other things, to land in a National Park. These say:-  
*"E.2 In the case of any land within the curtilage of the dwellinghouse which is within—*  
*(a) a World Heritage Site,*  
*(b) a National Park,*  
*(c) an area of outstanding natural beauty, or*  
*(d) the Broads,*  
*development is not permitted by Class E if the total area of ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.*

*E.3 In the case of any land within the curtilage of the dwellinghouse which is article 1(5) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse."*

11. The proposed building on National Park/Article 1(5) land would be more than 10m<sup>2</sup> in area but less than 20m from the main dwellinghouse and would be to its rear rather than to its side. Therefore, I am satisfied that none of the various limitations to Class E are breached, whether they be those of general application set out in paragraph E.1 or those that apply to land in National Parks and conservation Areas, as in limitations E.2 and E.3.

12. Instead, the Authority considers that the proposed outbuilding is inherently too large to be considered incidental to the enjoyment of this dwellinghouse. Therefore, the principal definition of Class E must be examined in some detail. This says:-

*"E. The provision within the curtilage of the dwellinghouse of—  
(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or  
(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas."*

13. Paragraph E.4 gives the following interpretation of Class E:-

*"For the purposes of Class E, 'purpose incidental to the enjoyment of the dwellinghouse as such', includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse."*

14. The Department for Communities and Local Government Permitted Development for Householders Technical Guidance of August 2010 (PDTG) says, at page 40, that a purpose incidental to a dwellinghouse would not, however, cover normal residential uses such as... the use of any outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.

15. Looking at the uses to which the building would be put in the light of this material, an annotated ground floor plan shows a swimming pool with a sunbathing area, a gymnasium with a changing room with shower, WC and sauna, a bicycle store with space for a ride-on lawn mower, a plant room, presumably mainly for the swimming pool, a further WC and a store.

16. The swimming pool element of the proposed building is expressly referred to in the Class E definition. With the possible exception of the provision of two separate WCs, I do not consider that the level of provision of recreational facilities for "*the personal enjoyment of the occupants of the dwellinghouse...*" to quote from paragraph E.4 set out in paragraph 12 above, with other ancillary rooms normally associated with them, such as showers and changing facilities, to fall outside the definition of uses incidental to the enjoyment of a dwellinghouse as such.

17. The main space users in the building, the swimming pool, gymnasium/changing room and the bike/lawn mower store all fall within that category and the incorporation of two WCs, which occupy a very small part of the total area of

the building, can, in my professional judgement, be overlooked for these purposes.

18. The local planning authority considers that there is some notion of 'reasonableness' in assessing matters of this sort. I can find no mention of it anywhere in the relevant legislation or in any official guidance on this matter.
19. There is reference to it in *Emin v Secretary of State for the Environment & Mid-Sussex District Council* (1989) 58 P&CR 416 but this in the context of questions of fact and degree, "which are quintessentially appropriate for consideration by [among others] an... Inspector, who is well practised in the problem of resolving sometimes difficult and finely balanced issues of fact in the field of land use planning".
20. As someone with rather more than forty years' practical experience of carrying out that balancing exercise, I conclude, therefore, that the main component uses of the proposed building, although occupying a large area, both independently and collectively, remain firmly incidental to the enjoyment of 'Keyhaven House' as a dwellinghouse as such.
21. Therefore, the principal objection of the Authority must be that the swimming pool, gymnasium and bike store combine to create a building so large that it cannot on any definition be considered incidental to the enjoyment of the main dwellinghouse. It cites five appeal decisions, where Inspectors appear to confirm the Authority's approach.
22. It is difficult for me to say whether any of the five decisions equate to the situation at 'Keyhaven House', but the likelihood is that they relate to smaller dwellings set in rather more restricted grounds. In my opinion, the aerial photograph, at page 14 of the appellants' agent's appeal statement, of 46 Fairway Avenue, West Drayton, Middlesex (Appeal ref:- APP/R5510/X/10/2130342 cited in its favour by the Authority) confirms this.
23. In these circumstances, I consider that it is sufficient to say that this dwelling is a spacious three-storey detached dwelling more than one hundred years old set within a large well-established curtilage. Although, the footprint of the proposed structure may not be much smaller than that of the main house, I am satisfied that its single-storey scale, and the uses to which it is to be put, place it firmly within the category of building incidental to the enjoyment of 'Keyhaven House'. Moreover, it satisfies all of the limitations imposed by Class E of Part 1 of Schedule 2 to the GPDO as amended.
24. In contrast, it should not be overlooked that in *Emin*, where it was held that size alone of the subordinate building was not in itself determinative of its incidental status, the building in that instance was twice the size of the main dwelling and incorporated an indoor archery range, to my mind a rather more idiosyncratic proposal than anything envisaged by the appellants in this case.
25. It must not be forgotten that the limitations of an LDC of this type are quite specific and onerous. The certificate simply states that on the relevant date the specified development was immune from enforcement action. Any use, operation or matter, which is materially different from that described in the LDC, 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. Among these matters may be considered the introduction into a freestanding

building in the grounds of a dwellinghouse, and constructed for purposes incidental to its enjoyment as such, of primary residential uses such as living rooms, kitchens, bedrooms and bathrooms.

26. For the reasons given above I conclude, on the evidence now available, that the Authority's refusal to grant a lawful development certificate was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

**Formal Decision**

**Appeal Ref:- APP/B5906/X/13/2195174**

27. The appeal is allowed and, attached to this decision, is a lawful development certificate describing the extent of the proposed operations which is considered to be lawful.

*Ian Currie*

INSPECTOR



---

## Lawful Development Certificate

APPEAL REFERENCE APP/B9506/X/13/2195174  
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192  
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)  
ORDER 2010: ARTICLE 35

---

**IT IS HEREBY CERTIFIED** that on 15 October 2012 the operations described in the First Schedule hereto, in respect of the land specified in the Second Schedule hereto, and edged in black 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:-

The proposed construction of a single-storey outbuilding within the residential curtilage of the existing dwelling, as shown on the drawings submitted to the New Forest National Park Authority with application 12/97938 dated 15 October 2012, would constitute permitted development not requiring planning permission, by virtue of the provisions of Article 3 of, and Class E of Schedule 2 to, the Town and Country Planning (General Permitted Development) Order 1995, as amended by the Town and Country Planning (General Permitted Development) (Amendment) (No2) (England) Order 2008.

*Ian Currie*

INSPECTOR

Dated 09.01.2014

### ***First Schedule***

Construction of a single-storey outbuilding within the residential curtilage of the existing dwelling, as shown on the drawings submitted to the New Forest National Park Authority with application 12/97938 dated 15 October 2012

### ***Second Schedule***

Land at Keyhaven House, Saltgrass Lane, Keyhaven, Lymington, Hampshire, SO41 0TQ

**NOTES**

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. 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 have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. 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 or other matter, 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.
4. 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:09.01.2014

by Ian Currie MRICS MRTPI<sup>(Retired)</sup>

**Land at:- Keyhaven House, Saltgrass Lane, Keyhaven, Lymington, Hampshire, SO41 0TQ**

**Appeal ref: APP/B9506/X/13/2195174**

Scale:- 1:2,500

---

