

STATEMENT OF CASE

Project Number:

2023/1377

Project:

The Grange, Ashford Road, Lenham, Maidstone, ME17 2DA

Proposal:

Erection of two outbuildings (Lawful Development Certificate)

Date:

January 2024



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1. Introduction

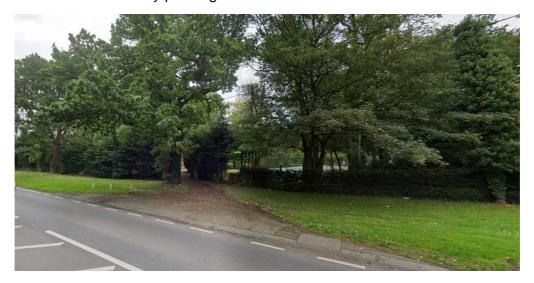
- 1.1 This statement has been prepared in support of my clients' Lawful Development Certificate Application. This is in relation to the erection of two outbuildings within the curtilage of an existing property.
- 1.2 Firstly, this statement will set out the details of the site description to provide a context in which the proposal has been designed. Secondly, we review the sites planning history and set out the details of the proposal subject of this application. Next, we provide a summary of the relevant national legislation which affects this proposal and confirm how we consider the proposal meets these requirements.
- 1.3 In addition to this statement the following documents have been provided:

Site Location Plan Existing and Proposed Site Plan Existing Floor Plans and Elevations Proposed floor plans Proposed Elevations Completed CIL Forms



2. Site Description

2.1 The site comprises a large two-storey detached dwelling on the southern side of Ashford Road (A20) and is set within a large rectangular plot. The site benefits from an access from the A20 with a parking area being provided to the front of the dwelling. Mature boundary planting is positioned to the front of the site and to the side and rear boundaries of the site. The existing access to the property is illustrated in the image below. As illustrated views of the existing dwelling are very limited due to the presence of mature boundary planting.



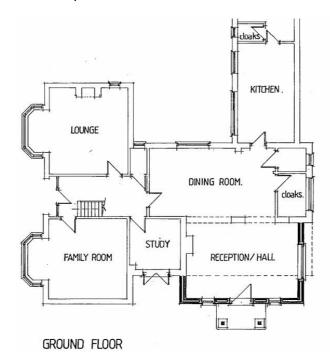
2.2 To the south and east of the site lies an agricultural field, beyond which lies the settlement of Lenham. In terms of planning constraints the site lies outside of the settlement boundary of Lenham and therefore within the countryside. The site is located within Flood Zone 1 and therefore is at a low risk of flooding. The site is not affected by any landscape or ecological designations.



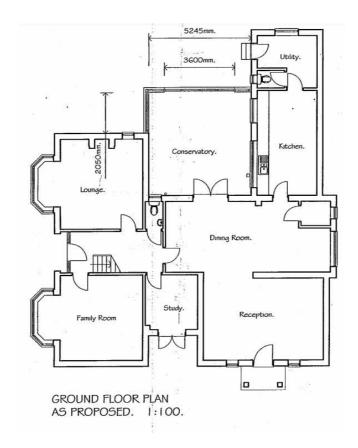
3. Planning History and Proposal

Planning History

- . 3.1 Planning permission was granted in September 2005 for the erection of a two storey extension under reference 05/1551. When describing the site and proposal, the Case Officer's report stated that: 'The Grange is a detached large dwelling located off from the Ashford Road (A20). The property has a drive, which leads off from the A20. The property is outside the village envelope of Lenham and is considered to be located within open countryside. The dwelling is in a secluded position which is well screened from the road and the surrounding area. The proposal is for the erection of a two storey front extension.'
 - 3.2 The proposed floor plans confirm that the proposal provided a front extension to the property to extend the existing reception area and to provide a front porch to the northern elevation, which fronts the highway. The approved floor plans are shown below.



- 3.3 Planning permission was granted in August 2011 for the erection of a rear conservatory under reference 11/1036. The conservatory was located on the southern elevation of the property, confirming that the northern elevation is the front elevation of the property. When describing the proposal the Case Officer set out within their report that: 'planning permission is sought for a rear conservatory. This would be positioned within an existing hard-surfaced courtyard area at the rear of the building, such that it would be enclosed almost entirely on three sides by existing walls. It would have a footprint of approximately 5.2m x 5.4m, eaves of 2.8m and a ridge of 3.9m and have fully-glazed elevations on a brick plinth to match the dwelling.'
- 3.4 The drawings submitted as part of this application show the positioning of a front door and entrance porch on the northern elevation which leads directly into the reception room. This confirms that the principal elevation in this case is the northern elevation of the property.



3.5 We consider that the drawings as shown above confirm that the principal elevation is the northern elevation of the property. This is important when assessing compliance with permitted development rights as detailed in the next section.

Planning Proposal

3.6 A Lawful Development Certificate is sought for the erection of two outbuildings.



4. Lawful Development Certificate Proposal

- 4.1 A lawful development certificate is sought for outbuildings within the residential curtilage of an existing dwelling.
- 4.2 The side extensions fall under Class E of the Town and Country Planning (General Permitted Development) Order 2015, Schedule 2, Part 1 as follows;

Class E (Outbuildings)

(a)permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class [F43 G,] M, [F44 MA,] N, P [F45, PA] or Q of Part 3 of this Schedule (changes of use);

N/A

(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse);

The proposal is set within a reasonably large plot, such that it would not exceed 50% of the curtilage.

(c)any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse;

The proposal would be positioned to the side and rear of the dwelling, not forward of the principal elevation.

(d)the building would have more than a single storey;

The proposal would be single storey

- (e)the height of the building, enclosure or container would exceed—
- (i)4 metres in the case of a building with a dual-pitched roof,
- (ii)2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or
- (iii)3 metres in any other case;

The proposed garage has a dual pitch roof with a maximum height of 4m

(f)the height of the eaves of the building would exceed 2.5 metres;

The eaves would measure 2.3m in height

(g)the building, enclosure, pool or container would be situated within the curtilage of a listed building;

N/A

- (h)it would include the construction or provision of a verandah, balcony or raised platform;
- (i)it relates to a dwelling or a microwave antenna;
- (j)the capacity of the container would exceed 3,500 litres [F47; or]

N/A

(k)the dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).]

N/A

E.2 In the case of any land within the curtilage of the dwellinghouse which is within—

(a)an area of outstanding natural beauty;

(b)the Broads;



(c)a National Park; or

(d)a World Heritage Site,

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.

N/A

E.3 In the case of any land within the curtilage of the dwellinghouse which is article 2(3) 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.

N/A

- 4.3 Whilst we acknowledge that the proposed footprint of the two outbuildings is relatively large the GPDO does not restrict outbuildings in terms of floorspace/footprint (providing that they do not take up more than 50% of the garden.) In this case the property is set within a large plot, such that the outbuildings would not be overly dominant.
- 4.4 The proposed garage would be used to by the applicants to park their personal vehicles and in addition those used in association with their business. The remainder of the garage would be used as a workshop and for storage of personal items relating to the maintenance of the dwelling and garden. The second outbuilding would be used as a swimming pool and entertaining space. The swimming pool would be used by the applicants as incidental to the residential use of the main dwellinghouse.
- 4.5 Paragraph E.4 of Class E indicates that purposes incidental to the enjoyment of the house includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house. (underlined for our emphasis). The technical guidance confirms that 'the rules also allow, subject to the conditions and limitations below, a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.' In this case, the proposal would provide for a garage, store, workshop and swimming pool. All these uses would be incidental to the residential use of the dwellinghouse.
- 4.6 Of relevance to this matter is an appeal decision (ref APP/A1530/X/22/3291073) which relates to an LDC application for an outbuilding used for storage of vehicles and other household paraphernalia and a gym. In this Case the LPA refused the LDC application on the basis that the outbuilding was too large to be considered incidental to the use of the dwellinghouse. The Inspector however referenced established Case Law, namely Emin v SSE and Mid Sussex District Council 1989 which confirms that regard should be had to the use to which the building would be put and the nature and scale of the use in its context in order to determine whether it would be incidental to the enjoyment of the dwelling.
- 4.7 A second appeal decision which is also of relevance related to an LDC for an outbuilding at a property In Mawdesley within the Borough of Chorley (Ref APP/D2320/X/22/3291325). Here the Inspector states that an outbuilding can be used for a variety of purposes and still be considered as incidental to the main dwellinghouse. The Inspector states within Paragraph 9 that: 'An outbuilding that is 'incidental' would contain uses that cannot exist without being functionally linked to and dependent on a primary residential use. Examples of this include storage and hobby rooms or other recreational uses.' The



Inspector goes on to note that 'there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance but that should not be determinative.' Further the Inspector notes that: 'There is nothing in the Emin judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Surely, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so.'

4.8 We consider therefore that whilst the proposed outbuildings cover a large footprint this should not be a determinative factor when assessing whether a proposal is incidental to the residential use of the main dwellinghouse. The property is set within a large plot such that there would still be a considerable amount of outdoor amenity space associated with the property. The proposed outbuildings would be functionally linked to the main dwellinghouse and would be incidental in their use.

5. Conclusion

5.1 As demonstrated above, we consider that we have confirmed that the proposal would comply with the General Permitted Development Order.

Appendix 1

Appeal Decision - ref APP/A1530/X/22/3291073.

Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/A1530/X/22/3291073

Somerson House, New Road, Aldham, Colchester, Essex CO6 3PN

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 certificate of lawful use or development (LDC).

The appeal is made by Mr Keiron Shelton against the decision of Colchester Borough Council.

The application Ref 213191, dated 10 November 2021, was refused by notice dated 12 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 outbuilding used for storage of vehicles and other household paraphernalia, and a gym.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

- 3. General planning permission for a building within the curtilage of a dwellinghouse incidental to its enjoyment is given by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') subject to exceptions and limitations (E1, E2, E3).
- 4. According to the delegated report on the application, the Council does not dispute that the proposal would meet all the exceptions and limitations in respect of Class E were the building considered to be incidental to the enjoyment of the dwellinghouse on the site. I have seen no evidence which contradicts or conflicts with this agreed position between the parties, and accordingly find it to be the case as a matter of fact.
- 5. The Council's sole foundation for refusing the LDC appears to be an argument that the development would not be incidental to the enjoyment of the dwellinghouse because of its proposed size of 280m2. However, established case-law (such as Emin v SSE & Mid Sussex DC [1989]) confirms that regard should be made to the use to which it is proposed that the outbuilding would be put and of the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwelling.

- 6. The appellant says that the covered space to be provided by the proposed outbuilding is required for the storage of his personal collection of 18 supercars which are at present dispersed over several sites away from his home.
- 7. In my view, this proposed use of the outbuilding would provide clear incidental quality as regards the enjoyment of the dwelling. Consolidating the vehicles on one site at the owner's address would enable him to appreciate the collection together at home at his convenience and would accordingly enhance the enjoyment of the dwelling, as would a gym and space for the storage of household paraphernalia. I am satisfied that a building of such size would be genuinely and reasonably required and not excessive for these purposes, being also subordinate to the large, detached dwelling set within extensive grounds.
- 8. For the above reasons, I do not consider that the storage of private cars in these circumstances would constitute an 'unrestrained whim' as implied by the Council.
- 9. The Council's argument that the size of the proposed outbuilding must render it unlawful is undermined by the case summaries it has pasted into its officer report (from the Planning Jungle website) since it can be seen that a small outbuilding (41m2) was found not to be not incidental, while an outbuilding similar in size (270m2) to the appeal development was found to be incidental. This demonstrates rather that it is necessary to apply the principles established by case law, as I have done in this Decision, rather than for size to be the decisive factor in isolation.

Conclusion

10. 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 an outbuilding used for storage of vehicles and other household paraphernalia, and a gym, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

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 10 November 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development benefits from general planning permission as a building within the curtilage of a dwellinghouse incidental to its enjoyment by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Andrew Walker

Inspector

Date 30 September 2022

Reference: APP/A1530/X/22/3291073

First Schedule

Outbuilding used for storage of vehicles and other household paraphernalia, and a gym.

Second Schedule

Land at Somerson House, New Road, Aldham, Colchester, Essex CO6 3PN

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 30 September 2022

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

Land at: Somerson House, New Road, Aldham, Colchester, Essex CO6 3PN

Reference: APP/A1530/X/22/3291073

Scale: Do not scale



Appendix 2

Appeal Decision - Ref APP/D2320/X/22/3291325.

Appeal Decision

Site visit made on 29 June 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

an Inspector appointed by the Secretary of State

Decision date: 18 July 2022

Appeal Ref: APP/D2320/X/22/3291325

The Old Rectory, High Street, Mawdesley L40 3TD

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 certificate of lawful use or development (LDC).

The appeal is made by Mr Richard Ainscough against the decision of Chorley Borough Council

The application Ref 21/00981/CLPUD, dated 10 August 2021, was refused by notice dated 17 November 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 the creation of a single storey outbuilding for incidental use associated with an existing dwellinghouse.

Decision

 The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operation which is considered to be lawful.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a lawful development certificate was well-founded. In this case that turns on whether the development falls within Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

- 3. It is clear from the Council's reason for refusal and associated documentation that there is no contention that the building in question does not meet all the conditions set out in paragraph E.1 of Class E and, indeed, I have no reason to bring this into question. The Council's decision is based on their claim that the building would be of an unreasonable size when considered against the size of the existing dwellinghouse and as a matter of fact and degree would not be commensurate to the existing property in terms of size and scale. This is disputed by the appellant.
- 4. The Planning Practice Guidance makes it clear that the applicant is responsible for submitting sufficient information to support an application. It goes on to state that in the case for a proposed development such as this the applicant needs to describe the proposal with sufficient clarity and precision to enable the

local planning authority to understand exactly what is proposed and what the development involves. The key question for the decision maker is whether the development had commenced on the application date, would it have been lawful for planning purposes.

- 5. The host dwelling is a large two storey dwelling with a large residential curtilage. To the east of the main dwellinghouse there is a tennis court area and a new outbuilding is currently being constructed. There are other outbuildings attached to the dwellinghouse including a kennel and existing double garage/car port.
- 6. The proposed plans show a single storey outbuilding which would accommodate a range of functions including the following:

An open store for six bicycles, utility vehicle, sailing boat and trailer and four motor cycles;

Two offices with space for associated furniture, storage and equipment;

Garage for a collection of five racing and seasonal use vehicles, vehicle lift, workshop area, tool storage and racing car parts storage;

Machine storage for a range of garden and maintenance equipment; and Potting shed and green house.

- 7. The appellant contends that the proposed uses would be incidental to the enjoyment of the dwellinghouse in land use planning terms. The Council has also stated that the activities indicated on the submitted plans fall into categories that, individually, may be acceptable as incidental to the enjoyment of the dwellinghouse. However, in the Council's judgement, when taken together the scale of the building would be of concern. The reason for refusal also identifies the footprint of the proposed building which would be greater than the footprint of the main house and would not be commensurate to it in terms of size and scale.
- 8. There is no statutory definition of "incidental" in the GPDO. Case law provides guidance on how it should be interpreted by decision-makers. In the Emin case¹ it was held that the size of an outbuilding is not relevant for the purposes of Class E, but the building must be 'required for some incidental purpose' in relation to the dwellinghouse. When dealing with cases such as this it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. In the Emin case it was held that it is wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide more accommodation for secondary activities than the dwellinghouse provides for primary purposes.
- 9. I have also taken account of the appeal decision² to which my attention has been drawn and, in particular, the word "incidental" in the GPDO connotes an "element of subordination of the proposed building in land use terms". The Technical Guidance advises that a purpose incidental to a dwellinghouse would not cover normal residential uses such as separate self-contained

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

² APP/P0119/X/12/2183050

accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen. An outbuilding that is 'incidental' would contain uses that cannot exist without being functionally linked to and dependent on a primary residential use. Examples of this include storage and hobby rooms or other recreational uses.

- 10. The range of evidence before me illustrates that in cases such as this it is very much a matter of fact and degree based on the very specific circumstances of each case. In addition, it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of proposed activities and whether they would be subordinate to the main use of the dwellinghouse. There is nothing in the Emin judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Surely, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so.
- 11. In this case the appellant presents that the space proposed is genuinely and reasonably required by him and necessary to accommodate its intended use. However, the Council disputes this, stating that in accordance with case law some objectivity is required as to whether the building is reasonably incidental to the dwellinghouse. In order for a building to be considered as permitted development all of it must be required for incidental purposes. In land use terms I see no reason why the proposed outbuilding is not required for incidental purposes and indeed the appellant's clear evidence is that it is reasonably required for incidental land use purposes. It would accommodate domestic-related storage, office space, garaging for the resident's vehicles, storage of machinery required for the management and maintenance of the substantial domestic curtilage and gardening-related uses.
- 12. Therefore, although I do not dispute that it is proposed to be a substantial outbuilding, there is certainly a clear element of subordination of the proposed building in land use terms. I have taken account of the Council's concerns that some of the uses could potentially be accommodated within the existing dwelling, but each of the uses, including the offices, would be functionally linked to and be dependent upon the primary residential use of the site. That is the key question in this case. I am satisfied that the proposed use of the outbuilding is incidental to the enjoyment of the dwellinghouse and consequently it falls within Schedule 2, Part 1, Class E of the GPDO.

Conclusion

- 13. I conclude that based on the evidence before me and as a matter of planning judgement, the single storey outbuilding would be required in its entirety for incidental purposes. In addition, the size of the building would be commensurate with its proposed incidental uses and, as such it would be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.
- 14. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the outbuilding was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

A A Phillips

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 10 August 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed single storey outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse and, as such it would be permitted development by virtue of Schedule 2, Part 1, Class E of the GPDO.

Signed

INSPECTOR

Date: 18 July 2022

Reference: APP/D2320/X/22/3291325

First Schedule

Creation of a single storey outbuilding for incidental use associated with an existing dwellinghouse.

Second Schedule

Land at The Old Rectory, High Street, Mawdesley L40 3TD

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 use /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, was /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 use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 18 July 2022

by A A Phillips BA(Hons) DipTP MTP MRTPI AssocIHBC

Land at The Old Rectory, High Street, Mawdesley L40 3TD

Reference: APP/D2320/X/22/3291325

Scale: Do not scale

