



Appeal Decision

Site visit made on 21 October 2024

by D Hartley BA (Hons) MTP MBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 21st October 2024

Appeal Ref: APP/R0660/X/24/3345078

10, Lees Lane, Newton, Cheshire, SK10 4LJ

- 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 Zac Bagwell against the decision of Cheshire East Council.
 - The application ref 24/0286M, dated 25 January 2024, was refused by notice dated 21 March 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 the erection of an outbuilding.
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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 erection of an outbuilding which is found to be lawful.

Procedural Matter

2. The appellant has drawn my attention to the refusal of an LDC application for a similar proposed outbuilding on the land¹. Such a proposed outbuilding would be internally used/configured differently from the proposed outbuilding that is the subject of this appeal. The appellant has indicated that they would be content for me to consider this alternative proposed development as part of this appeal. The appeal process should not be used to evolve an LDC proposal. I shall not therefore consider the plans that relate to another LDC application. The appellant has the option of separately appealing the other refused LDC application should that be so desired.

Main Issue

3. For the avoidance of doubt, I make clear that the planning merits of the proposed erection of an outbuilding are not relevant in this appeal. My decision rests on the facts of the case and on relevant planning law and judicial authority.
4. The main issue is whether the Council's decision to refuse to grant an LDC was well-founded with particular regard to whether the proposed erection of an outbuilding would be incidental to the enjoyment of the dwellinghouse known as 10 Lees Lane, Newton, SK10 4LJ and would be permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning

¹ LDC application 24/1709M refused on 27 June 2024

(General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

5. The proposed outbuilding is shown on submitted drawing No. 23048_01 Revision B. There is no dispute between the main parties that it would be built on land within the curtilage of the dwellinghouse known as 10 Lees Lane, Newton² and that in terms of its size, position, and height, would not exceed the restrictions or limitations imposed in respect of Class E of Part 1 of Schedule 2 of the GPDO.
6. The proposed outbuilding would include a double garage, a swimming pool, a bathroom, a plant room, an office, and a utility/kitchenette. Class E states that *'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'*, is permitted development.
7. The point of dispute between the main parties relates to whether the proposed utility/kitchenette would be incidental to the enjoyment of the dwellinghouse and, owing to the circulation space around the swimming pool, whether this would be reasonably required. The claim also made by the Council is that the outbuilding would be *'excessively large'* when compared to the main dwellinghouse. The latter point is made in respect of the size of the respective utility/kitchenette, office and swimming pool components of the proposed building.
8. As outlined in the Government's Permitted Development Rights for Householders: Technical Guidance (updated 2019), a purpose incidental to a dwellinghouse does not 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. The proposed double garage, workshop/storage area, plant room, office, swimming pool (with bathroom) are not normal residential uses. They are functionally related to the enjoyment of the dwellinghouse and, in this regard, are incidental to it.
9. While there is circulation space proposed around the swimming pool, I do not find that this would be excessive in size, or that it could be said that it was not reasonably required. It is not unusual to have space around a swimming pool for circulation purposes.
10. The plans show a proposed kitchenette/utility. I have considered the appellant's representation which states that this space would be used to *'enable the provision of hand washing/cleaning facilities for tasks associated with the garage, workshop and office space as well as by external visitors to the site such as gardeners'*, that it *'would lack any means of cooking by virtue of a lack of an oven or cooking hob, nor any supporting seating or table provision'*, and that it would be *'solely limited to handwashing and basic drink preparation such as making tea/coffee when using the office or working in the workshop/garage'*.
11. Based on the above explanation of the use of this part of the proposed outbuilding, I do not find that it could reasonably be described as a kitchen or

² The land has been lawfully confirmed as being within residential curtilage as part of approved LDC Ref 22/4741M

indeed a normal residential use. In my judgement, the proposed kitchenette/utility would be used in association with other functionally related uses in the building, such as the office and workshop. I recognise that there is a bathroom proposed next to the swimming pool, but it is reasonable that I conclude that this space would need a degree of privacy for those wishing to take a shower, or to change clothes, and hence the provision of a separate sink for handwashing or space to make a hot drink in association with use of the workshop and/or office, or indeed gardeners attending the property, is reasonably required in my judgement.

12. For the above reasons, I find that the proposed outbuilding does not include primary living accommodation. The space within the building is reasonably required. Overall, I do not find that the building is excessive in size despite such a claim being made by the Council. The proposal would be incidental to the enjoyment of the dwellinghouse. Given this, coupled with the size, position, and height of the proposed outbuilding, I conclude that it would be permitted development under Class E of Part 1 of Schedule 2 of the GPDO.

Conclusion

13. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the erection of an outbuilding 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).

D Hartley

INSPECTOR



Plan

This is the plan referred to in the Lawful Development Certificate dated: 21st October 2024

by D Hartley

Land at: 10, Lees Lane, Newton, SK10 4LJ

Reference: APP/R0660/X/24/3345078

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 25 January 2024 the use and operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched in black 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 outbuilding is permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

D Hartley

Inspector

Date: **21st October 2024**

Reference: APP/R0660/X/24/3345078

First Schedule

Erection of outbuilding as shown on drawing No. 23048_01 Revision B

Second Schedule

Land at 10, Lees Lane, Newton, SK10 4LJ

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 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.