

RIVERWAYS New Bath Road, Twyford. RG109RY

**CERTIFICATE OF LAWFULNESS HOUSEHOLDER STATEMENT FOR OUTBUILDING UNDER
CONSTRUCTION**



Riverways is a two storey 4 bed house with a curtilage of just under 1 acre. The house and boat house were built in 1927/8 **with a footprint/land use of 148.2 sqm**; not including slipway, concrete drives, paths and hardstanding.

From the aerial photo above, it is clear that Riverways has no immediate neighbours.

Distances to nearest residential neighbours: North 569M, South East 320M, West 650M.

Riverways commercial egg farm is closest at 97M but shielded by a 30ft Laurel Hedge.

*This technical guidance has been produced to help homeowners understand how they can exercise their rights to carry out development while protecting the interests of their **neighbours** and the wider environment*

Class E: buildings etc

This provides permitted development rights within the curtilage of a house for:

(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

Class E sets out the rules on permitted development for buildings etc within the [curtilage of a house](#). Buildings which are attached to the house are not permitted under Class E (they would be subject to the rules in Class A). Buildings under Class E should be built for purposes incidental to the enjoyment of the house. 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.

But 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.

Under Class E, the following limits and conditions apply:

E.1 Development is not permitted by Class E if:

(a) permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of Class M, N, P, PA or Q of Part 3 of this Schedule (change of use)

Buildings etc are not permitted where the house was created under the permitted development rights to change use, set out in Classes M, N, P, PA, and Q of Part 3 of Schedule 2 to the Order (see [Introduction](#))

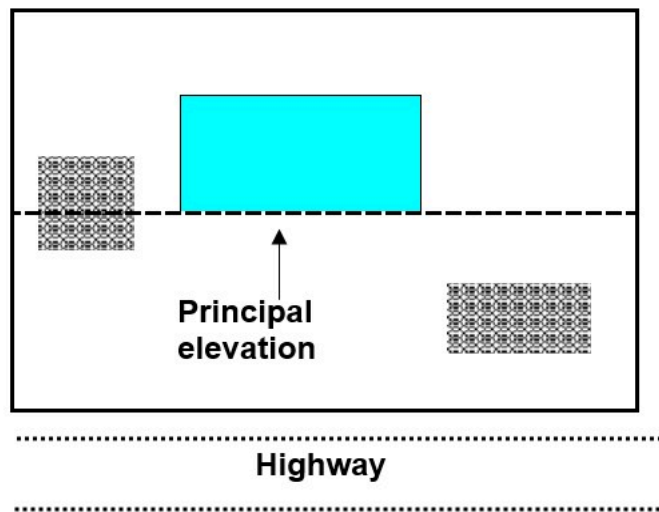
(b) the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse)

The total area of ground around the house covered by buildings, enclosures and containers must not exceed 50% of the total area of the curtilage, excluding the [original house](#). The 50% limit covers all buildings, so will include any existing or proposed new extensions to the original house under Class A of the permitted development rules or that have been granted planning permission, as well as existing and proposed outbuildings. It will exclude the area covered by the original house, but will include any separate detached buildings even where they were built prior to 1948 or if the house was built after that date, built when the house itself was built (for example a detached garage).

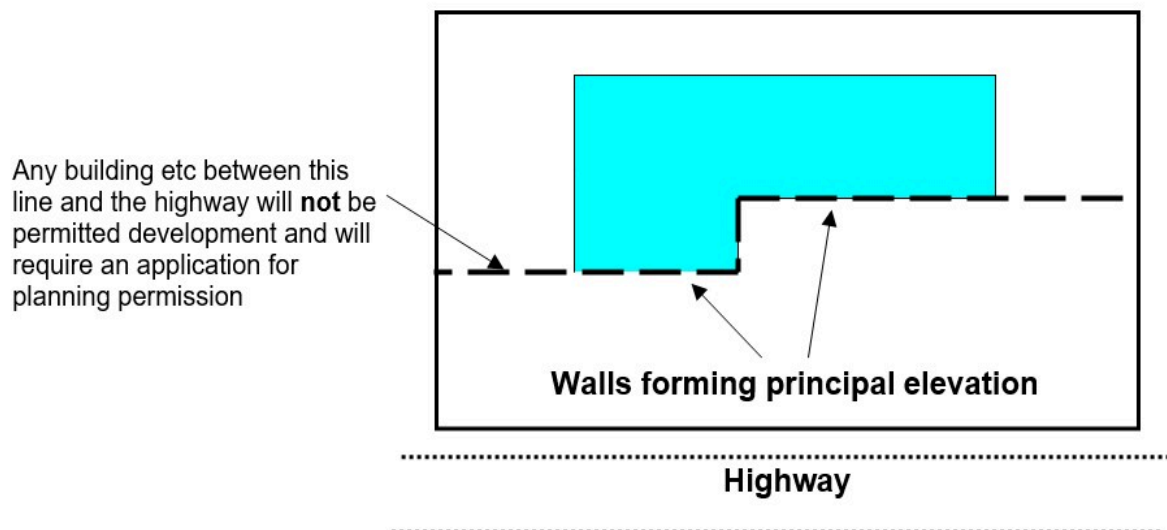
(c) any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse

Development is not permitted under Class E in any area in front of the principal elevation of a house. It also prevents permitted development anywhere in front of a hypothetical line drawn through the principal elevation to the side boundary of the land surrounding the house. Principal elevation has the meaning set out in the [General issues](#) section of this document. For example:

-  Original house
-  These developments would **not** be permitted development under Class E
-  Any building etc between this line and the highway will require an application for planning permission
-  Boundary of property



Where the principal elevation comprises more than one wall facing in the same direction, all such walls will form part of the principal elevation and the line for determining what constitutes 'extends beyond a wall' will follow these walls:



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

Any buildings within the curtilage can only have one storey. Buildings with more than one storey are not permitted development and will require an application for planning permission.

(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 height of the building, enclosure or container should be measured from the highest ground level immediately adjacent to the building, enclosure, or container to its highest point.

The height limit on a 'dual-pitched roof' of 4 metres should also be applied to buildings that have 'hipped' roofs (slopes on all four sides).

If any part of the building, container or enclosure is within 2 metres of the boundary of the curtilage of the house, then the height limit for the total development is restricted to 2.5 metres if it is to be permitted development.

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

The eaves of a building will be the point where the lowest point of a roof slope, or a flat roof, meets the outside wall of the building. The guidance on [Class A \(d\)](#) includes examples and further guidance.

Riverways outbuilding once completed will adhere to all of the above Class E conditions as confirmed below

Marcus Hillman visited the site on 03/09/2024; measurements were taken to confirm the eaves and ridge heights were under 2.5m and 4m respectively and therefore not disputing that the outbuilding complies to Class E conditions but later stated 'does not conform due to its scale and size' Furthermore, it is an ancillary building that is not incidental to the enjoyment of the main dwelling house.'

There is no reference to scale and size that would deem an outbuilding excessive for an incidental use in the technical guidance.

However, with the above points in mind, the case below suggests

Size **might** be important but is **not by itself conclusive.**

Burden of Proof

In an application for an LDC, the burden of proof is firmly on the appellant to demonstrate on the balance of probabilities that, at the time of the application to the Council, the development was lawful. Further, it has been established that if the Local Planning Authority has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason not to grant an LDC provided the appellant's evidence alone is **sufficiently precise and unambiguous**.

The main arguments concern whether the building is "required for a purpose incidental to the enjoyment of the dwellinghouse". In approaching this question, it is necessary to identify, first of all, the purpose(s) for the building and the incidental quality in relation to the enjoyment of the dwelling. Secondly it is necessary to consider whether the building is genuinely and reasonably required in order to accommodate the proposed use(s) or activities and thus achieve that purpose.

From these a number of principles can be deduced; that the building should be "required" for the incidental purpose; it is up to the appellant to demonstrate this on the balance of probabilities; the word "incidental" connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse and the incidental use cannot rest solely on the unrestrained whim of the appellant himself. There must be some sense of reasonableness in all the circumstances.

This does not mean imposing a hard objective test so as to frustrate the reasonable aspirations of a particular owner. Size *might* be important but is *not by itself conclusive*.

Where an LDC is sought, the onus is on the appellant to demonstrate ***precisely and unambiguously*** that the proposed development would have been lawful, on the balance of probabilities.

The appellant is expected to identify the purpose and incidental quality of what is proposed in relation to their enjoyment of the dwellinghouse and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

We believe the proposed outbuilding is reasonably required for the purpose's incidental to the enjoyment of the dwelling house and enclose the evidence below.

Householder Information

[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

Due to the location Fishing is a new hobby [REDACTED]

[REDACTED] finds daily Pilates very beneficial and regularly uses free weights and cardio machines to maintain fitness along with canoeing when conditions on The River Loddon allow.

I have been a PGA golf professional for 40 years and as such I receive courtesy at Clubs around the world. [REDACTED] enables us to travel the country via magnificent golf courses and I would like to do them justice.

At present my standard of play is not what my peers or myself expect and therefore a round of golf is not as enjoyable as it once was. Now semi-retired I wish to get back to playing at a decent level and I know it will require dedication and plenty of practice. The Golf simulator will not only make the journey more enjoyable but the detailed feedback from the video analysis will hasten the process.

The Outbuilding has been designed for the use as a Golf Studio, Gymnasium and Home Office

We have prepared a 3d rendered plan of the outbuilding showing how the space would be used once completed.

One gable end for siting the golf simulator screen; all others hipped to lessen the visual impact and raised ceilings to enable the swinging of golf clubs and to accommodate Gymnasium activities.

Riverways is not on mains gas and relies on a Bore Hole for water.

A heat pump with UFH will be used for heating; Solar collectors for hot water, Marley Solar Panels and a waste water heat recovery system to minimise running costs. To be energy efficient, all windows will be predominantly south facing for solar gain and insulation will be maximised where possible. The enclosed entrance to the south will help minimise heat loss during entry and exit.

The Plant room will house the equipment below and associated electrics/controls and pumps.

- Heat pump
- UFCH manifolds, pump and master control panel.
- Solar Inverter
- Heat exchanger for waste water heat recovery from showers.
- Water pressure vessel, UV purification and filter system. Purified water storage.
- Solar hot Water Cylinder with immersion back up.
- Water softener
- Steam generator and essence diffuser.
- A club repair work station/bench will be positioned under the window.
- The increasing Fishing gear can be stored in this area.

The Golf Studio

Golf Swing Systems are the leading supplier of simulators in the UK. Not only do they supply the technology but they also build Golf Garden Studios and our design was based on The Muirfield.



As [REDACTED] and I would often use the simulator feature together; the space at the rear would accommodate both sets of golf clubs and a seating area for either of us waiting their turn ([REDACTED] [REDACTED])

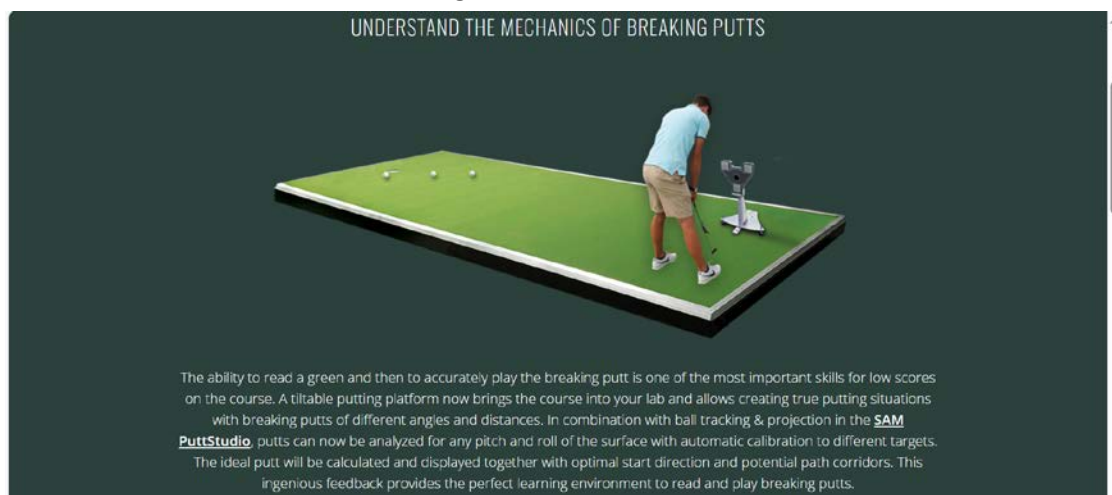
Specialised black out golf net curtains are deployed for the sides when using the simulator; not required when utilising the video swing analysis data [REDACTED] [REDACTED]

[REDACTED] This would be predominantly for me.

Putting Studio

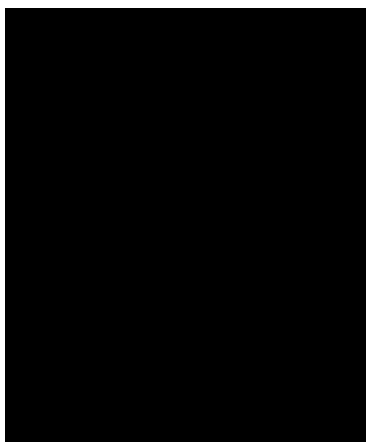
Tour Professionals make 99% of 2-foot putts, 96% of 3-foot putts, 88% of 4-foot putts, and 77% of 5-foot putts and they make a 10-foot putt 40.9% of the time. Using the SAM PuttStudio with a tiltable platform will help me achieve similar percentages.

SAM PuttLab Studio. 2m wide 4m long.

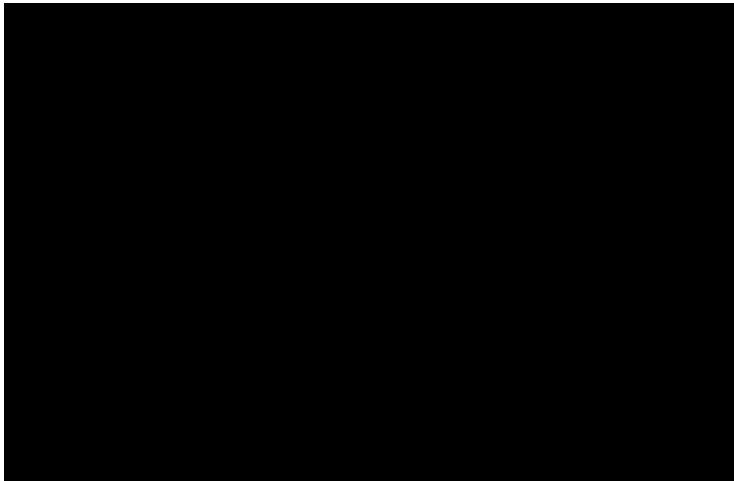


Loft and Lie Machine: This completes the studio setup next to the SAM PuttStudio.

Club lofts and lies can change due to regular use especially on synthetic matts. To maintain consistency, they have to be checked and adjusted regularly to suit the individuals' swing dynamics.



Boat Storage Locker



Steam Room: Designed to fit the two person Turkish design from Oceanic.

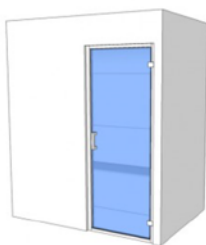
Steam rooms are very beneficial and can help improve circulation and blood flow to the body. This can assist with soothing discomfort and increasing muscle flexibility.

Will be used after a golf practice session/gym workout or indeed after a Kayak trip on the river.

Also, a useful space to hang wet gear from Golf/River activities after clean down in the shower.

2 Person Commercial Turkish Steam Room Model 2A

Model 2A Turkish Steam Room
Without Floor Left Handed



Turkish Steam Room Model 2A:

- Dimensions: 1966 x 1346 x 2400mm
- Bathers: 2
- Steam Generator Size: 6Kw Heavy Duty Generator
- Water Softener + 20Kgs of Salt (20 regenerations)
- 1000mm Disabled Access Door
- Red Steam Nozzle
- Steam Nozzle Guard
- 1 Chrome Spotlight
- 4" Static vent with variable diffuser
- Extra Layer of Tanking
- Choice of various mosaics
- Comprehensive instructions for assembly, use and maintenance
- All fixtures and fittings

Gymnasium

Gary Player's approach to fitness was revolutionary at the time, but it helped him go on to win nine majors, and he's still spritely at 85-years-old. He still shoots around even par most rounds, and he kicked-off the [2020 Masters by crushing a high draw on his honorary opening tee shot](#).

The benefits of weight training include increased muscle mass, improved bone density, increased metabolism, improved body composition, enhanced athletic performance, better posture, improved mental health, reduced injury risk, and improved functional capacity.





Home Office



Extra storage will be provided 


 will occupy part of the space along with a punchbag which helps me to de-stress and improve my mental wellbeing. A small bench locker will be provided for towels with dressing gowns on hooks.

We feel we have proved that the spaces created in the outbuilding are sufficiently precise and unambiguous for the purpose and reasonably required for the incidental activities proposed.

- **Proved the Outbuilding is reasonably required for the purpose proposed.**
- **Proved the space requirements for the activities proposed.**
- **Proved the activities proposed are incidental to the dwellinghouse.**
- **Proved both visually and in land use that the Outbuilding is subordinate to the dwellinghouse although from *Emin v Secretary of State*, this was not required.**

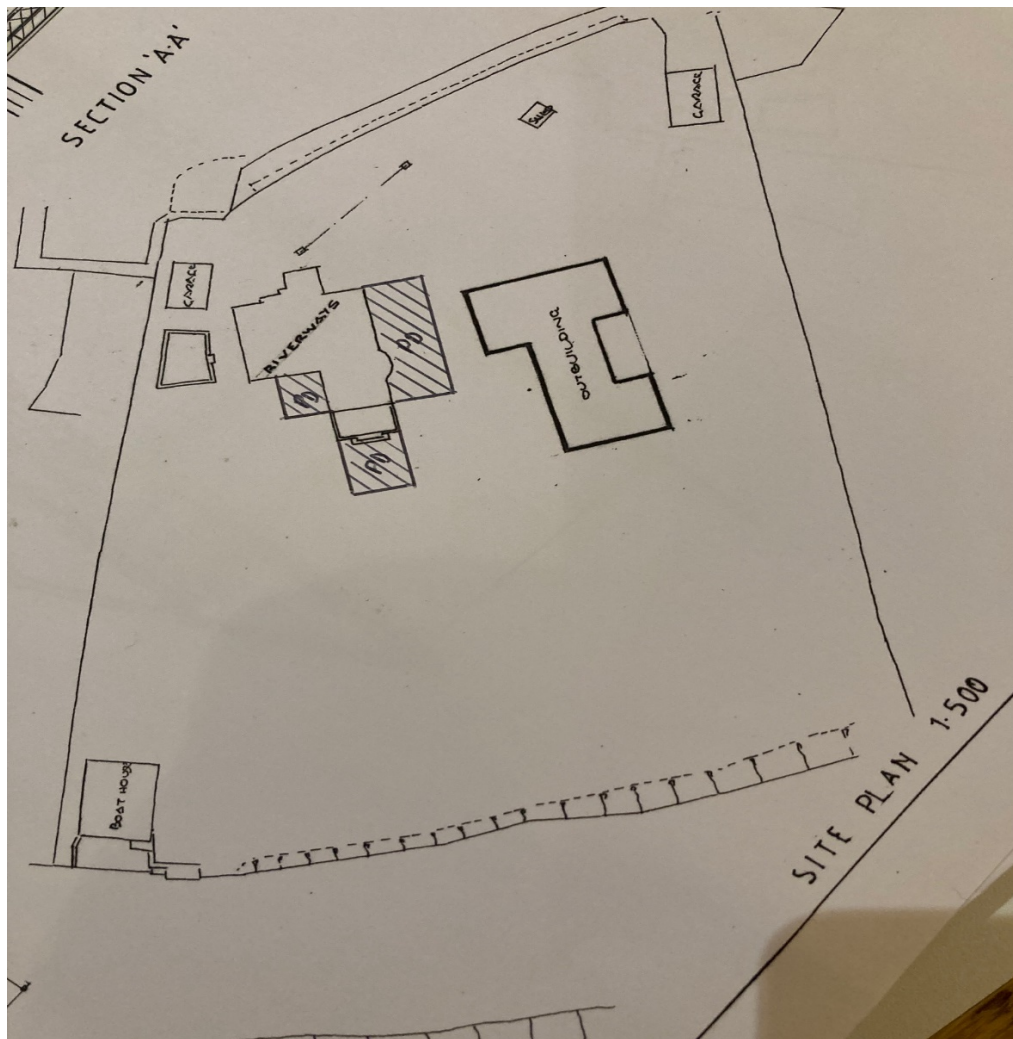
“incidental” connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse and the incidental use cannot rest solely on the unrestrained whim of the appellant himself.

This does not mean imposing a hard objective test so as to frustrate the reasonable aspirations of a particular owner. Size *might* be important but is *not by itself conclusive*.

The original dwelling had a land use footprint of 148.2 sqm (not including slipway, concrete drives, paths and hardstanding.) As a two-storey building **197.4 sqm**.

With the implementation of permitted development via the submitted application for a Lawful Development certificate; the land use footprint will increase to **253.28 sqm** and overall **262.2 sqm**

The proposed Golf Swing Studio/Gymnasium and Home Office has an area of **99 sqm** and the Plant Room of **16 sqm**; clearly showing the outbuilding to be subordinate to the dwelling in land use terms.



Pictures below from the existing entrance and riverside lawn show how visually the outbuilding is subordinate to the dwelling.



[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Below is a recent Appeal Decision of a similar if not larger Class E development that was allowed.

Appeal Decision

Site visit made on 30 July 2024 by **D Boffin BSc (Hons) DipTP**

MRTPI Dip Bldg Cons (RICS) IHBC

an Inspector appointed by the Secretary of State

Decision date: 12 August 2024.

Appeal Ref: APP/T0355/X/23/3318214 The Cottage, The Straight Mile, Shurlock Row, Reading RG10 0QN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) (the 1990 Act) against a failure to give notice within the prescribed period of a decision on an application for a certificate of lawful use or development (LDC).
 - The appeal is made by Mr McArdle against the Council of the Royal Borough of Windsor and Maidenhead.
 - The application ref: 22/03192/CPD is dated 28 November 2022.
 - The application was made under section 192(1)(b) of the 1990 Act.
 - The development for which a LDC is sought is a proposed detached outbuilding.
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Decision

1. The appeal is allowed and attached to this decision is a LDC describing the proposed operation which is found to be lawful.

Applications for costs

2. An application for costs was made by Mr McArdle against the Council of the Royal Borough of Windsor and Maidenhead. This application for costs is the subject of a separate decision.

Preliminary Matters

3. The description of the development in the banner heading is taken from the Council's decision notice and the appeal form without the wording '*certificate of lawfulness to determine whether the.... is lawful*' which is superfluous. The appeal is against the failure to give notice within the prescribed period of a decision on an application for a LDC because the appeal was received on the same day that the Council issued the decision on the LDC application. That decision notice indicated that the Council determined that '*The proposal is not automatically granted planning permission under Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 (as amended), as it has not been demonstrated that the use of the building would be for purposes incidental to the enjoyment of the dwellinghouse. As such the proposal fails to comply with paragraph E.4.*'

4. The Planning Practice Guidance (PPG) makes clear that an applicant is responsible for providing sufficient information to support an application. It says that in the case of an application for proposed development, an applicant needs to describe the proposal with sufficient clarity and precision to enable a Local Planning Authority to understand exactly what is involved. For the avoidance of doubt, the planning merits of the development are not relevant in this appeal which relates to an application for an LDC. My decision rests on the

facts of the case, on relevant planning law and judicial authority. The test of evidence is made on the balance of probability.

Main Issue

5. The main issue is whether the Council's deemed refusal to grant an LDC was well-founded.

Reasons

6. The appeal property comprises a detached dwelling in spacious grounds. There are also some outbuildings within those grounds. The proposal involves erecting a detached single storey outbuilding, situated on an area laid to lawn approximately southeast of the dwelling. The outbuilding would contain a games room for a pool table with table tennis top along with a swimming pool, jacuzzi, sauna, gym and changing room, plant room and storeroom.
7. Article 3, Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for development within the curtilage of a dwellinghouse. Class E(a) of Part 1 allows for the provision within the curtilage of the dwellinghouse of 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 (Class E).
8. The appellant seeks to establish that the building would be granted permission by virtue of Class E. There is no dispute between the parties that the development falls to be considered under Class E and that the proposal would meet paragraphs E.1, E.2 and E.3 of Class E. What is at issue is whether the proposal would be for a purpose incidental to the enjoyment of the dwellinghouse as such, and whether the development would be reasonably required for that use.
9. Whilst the outbuilding would contain a WC and shower, I am satisfied that these facilities would be ancillary to the leisure uses of this building. It is not unreasonable to regard the undertaking of exercise, sporting pursuits and undertaking more passive activity like enjoying a sauna or sitting in a jacuzzi, as falling within the wide range of day-to-day domestic leisure and recreational activities that occupants of a dwelling might participate in.
10. Moreover, there is no dispute that the proposed uses are ones which, in principle, could be considered as incidental to the enjoyment of the dwellinghouse. However, the Council considers that it has not been made clear what the existing outbuildings are utilised for. The Council also considers that the size of the outbuilding is significant compared to that of the dwelling.

11. Case law¹ has established that 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 to accommodate the use and thus achieve that purpose. It also 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.
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12. Dealing firstly with the size, the footprint of the outbuilding would be relatively large, and it would cover a significant portion of the lawned southeastern area of the garden. However, the dwelling is 2-storey and it has the benefit of a generous garden area. Moreover, a significant proportion of that garden area would remain as landscaped amenity space. Within this context, the size of the proposed outbuilding alone does not lead me to conclude that its purpose would not be incidental to the enjoyment of the dwelling.
13. In addition, the evidence before me indicates how the rooms in the outbuilding would be laid out. There is also a detailed justification in respect of the size of each of the spaces and their allotted use/s. On balance, I consider that the internal space allocated to each of the various activities would not be excessive. The proposed building would be of a size that, in my view, is genuinely and reasonably required to accommodate those uses.
14. Although I did not enter the dwelling, there was nothing apparent in external views, to suggest that its interior space is not fully utilised. Furthermore, most of the individual proposed rooms' intended functions, as labelled, are nowadays often found in outbuildings set aside for consolidated leisure purposes. The existing outbuildings individually do not appear large enough to provide such a consolidated function. In any case, I observed that the existing outbuildings are all fully used for storage, garaging, outdoor dining/seating and other uses. As a result, I am satisfied that the activities for which the outbuilding would be required could not reasonably be accommodated within the dwelling or the existing outbuildings.
15. As such, in this case I consider there to be sufficient detail to determine that the proposed development would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Accordingly, it would be permitted development by virtue of the rights conveyed by Article 3, Schedule 2, Part 1, Class E of the GPDO.
16. This finding would not prevent the Council from exercising its powers of enforcement if the appellant proceeds to construct the proposed building not in accordance with the submitted plans, or to construct it for a different purpose, or if the building is subject to a future material change of use.

Conclusion

17. For the reasons given above I conclude, on the evidence now available, that the Council's deemed refusal to grant an LDC in respect of the proposed detached 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. *D Boffin*

INSPECTOR

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

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 28 November 2022 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 operations are permitted under the provisions of Class E of Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed *D*

Boffin

Inspector

Date: 12 August 2024.

Reference: APP/T0355/X/23/3318214

First Schedule

The erection of proposed detached outbuilding, as shown on the submitted proposed elevations and proposed floor plan drawings.

Second Schedule

Land at The Cottage, The Straight Mile, Shurlock Row, Reading RG10 0QN

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 of the 1990 Act.

It certifies that the operation 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 not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operation 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 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

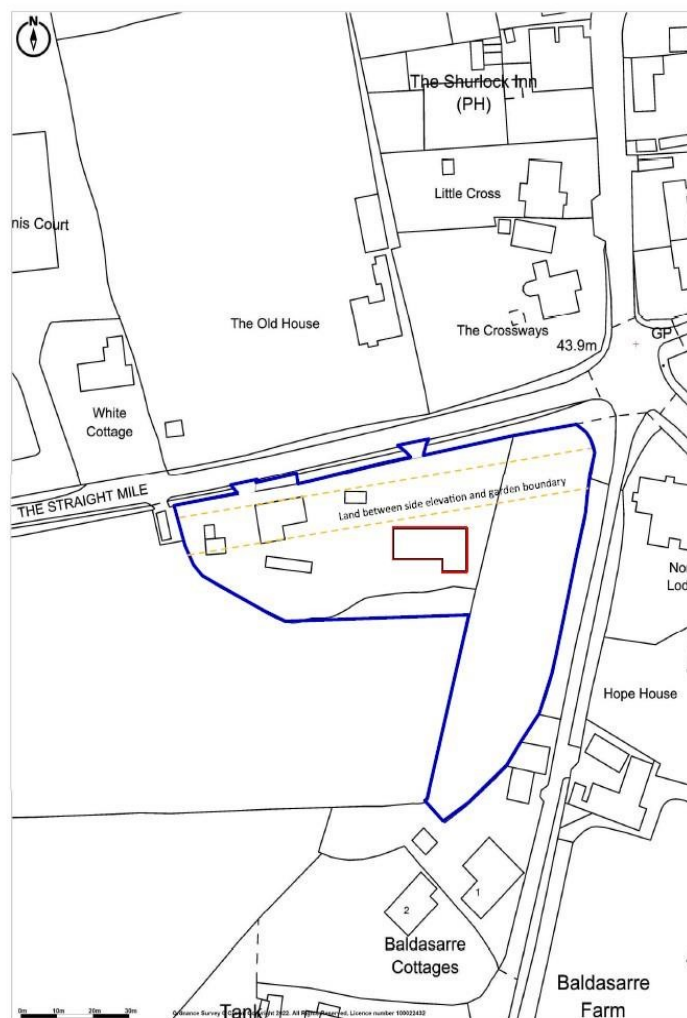
This is the plan referred to in the Lawful Development Certificate dated: 12 August 2024 **by D Boffin BSc**

(Hons), DipTP, MRTPI, Dip Bldg Cons (RICS), IHBC

Land at: The Cottage, The Straight Mile, Shurlock Row, Reading RG10 0QN

Reference: APP/T0355/X/23/3318214

Scale: Not to Scale



Promap
LANDMARK INFORMATION

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