



Appeal Decision

Site visit made on 11 November 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/N1920/X/18/3219305

The Studio, Hillfield Lane, Aldenham, Watford WD25 8PF

- 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 Simon Hughes against the decision of Hertsmere Borough Council.
 - The application Ref 18/2009/CLP, dated 11 October 2018, was refused by notice dated 30 November 2018.
 - 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 a single storey garage/store.
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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 proposed operation which is considered to be lawful.

Main Issue

2. The main issue is whether the proposed outbuilding would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

Reasons

3. The appellant considers that the proposed building is permitted development (PD) under Part 1, Class E of the GPDO. Class E permits the provision within the curtilage of the dwellinghouse of any building...required for a purpose incidental to the enjoyment of the dwellinghouse as such. The onus is on the appellant to make their case on the balance of probabilities.
4. The Council would appear to accept that the proposed uses as a garage and store are ones that would normally be considered purposes which are incidental to the enjoyment of a dwellinghouse. I have no reason to disagree as these have a normal functional relationship with the primary residential use of the house, but are not necessarily part and parcel of the residential use.
5. However, the Council contends that the proposed design and scale of the outbuilding have not been shown to be incidental to the enjoyment of the main

- house. The Council suggests that the proposed garage use would not require such a large outbuilding.
6. As to the design and size of the building, there is no dispute that the restrictions in E.1 of the GDPO would be met. That said, in assessing whether a proposed use is for a purpose incidental to the enjoyment of a dwellinghouse, regard should be had to the nature and scale of the use proposed. Physical factors such as size may be taken into account as part of this assessment but are not determinative.
 7. It needs then to be shown that the building is reasonably required in order to accommodate the proposed use. Whether a building is 'reasonably required' cannot rest solely on the unrestrained whim of the householder. Equally, the reasonable aspirations of householders should not be frustrated provided that the use is sensibly related to the enjoyment of the dwelling.
 8. The appellant indicates that the proposed outbuilding is intended for use as a garage to accommodate two private vehicles, and also for storage including a ride-on lawn mower and general household items. Garaging for two private vehicles would not be unreasonable in nature or scale for one private dwelling. The large size of the appeal site garden also means that a ride-on lawn mower would be a justifiable domestic requirement. The limited availability of storage within the main house by reason of living accommodation being located in the roof also indicates that additional household storage is reasonably required.
 9. The distance of the proposed outbuilding from the main house does not render the building so far away that it would not be likely to be used for these incidental purposes. The Council does not elaborate on its view that the design of the building would mean that it would not be incidental. In my view there is nothing inherent in the design that means it is intended for purposes other than those specified.
 10. Drawing these matters together, although the proposed outbuilding would have a large footprint relative to the house, as a matter of fact and degree, I find that the nature and scale of the proposed use mean that it would be for a purpose incidental to the enjoyment of the dwelling house. As regards the DCS reference 100-078-012 appeal decision referred to by the Council, in that case, the then proposed outbuilding would have had a footprint some six times the size of that of the host dwelling, which is not the case here.

Conclusion

11. I conclude that the proposed outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse. It would be PD under Class E, and its construction would have been lawful if begun at the time of the application. The Council's decision to refuse to grant an LDC was not well-founded. The appeal is allowed and I will exercise the powers transferred to me under s195(2) of the 1990 Act.
12. This finding would not prevent the Council from exercising their powers of enforcement if the appellant proceeds to construct the proposed building not in accordance with the submitted plans, or to construct if for a different purpose, or if the building is subject to a future material change of use.

V Bond

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 11 October 2018 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 garage/store, as described in the application Ref 18/2009/CLP dated 11 October 2018 and shown on the submitted plans Dwg 04, Dwg 07 and Dwg 08 would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

V Bond

Inspector

Date 10 December 2019

Reference: APP/N1920/X/18/3219305

First Schedule

Single storey garage/store

Second Schedule

Land at The Studio, Hillfield Lane, Aldenham, Watford WD25 8PF

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, 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 operations 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, 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: 10 December 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

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Scale: NOT TO SCALE

