



Appeal Decision

Site visit made on 23 July 2020

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24th September 2020

Appeal Ref: APP/Z0116/X/19/3239100

Land at 30 Honey Garston Road, Hartcliffe, Bristol BS13 9LT

- 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 N Proud against the decision of Bristol City Council.
 - The application Ref 19/03742/CP, dated 31 July 2019, was refused by notice dated 11 October 2019.
 - 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 a new garage / work area.
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Summary Decision: The appeal is allowed and a certificate of lawful development is issued in the terms set out below in the Formal Decision.

Preliminary Matters

1. Whilst the development proposed on the application form is a 'garage / work area' and the plan¹ submitted with the application shows a garage workshop and a WC, it is noted that the proposal was amended during the course of the application. The amended plan² shows just a garage on the layout arrangement. The appeal has been determined on the basis of the amended plan.
2. Notwithstanding the above, the amended layout plan shows a rectangular shape towards the front of the building, which is part within the footprint of the proposed garage and part outside. This rectangular shape contains the words 'floor plan'. This appears to be an error on the plan as this shape does not correspond to any element visible on the proposed side elevations and is not shown on the smaller scale proposed site layout plan. It is in the approximate location of the garage doors on the front elevation, but is the wrong shape and size to represent the garage doors if they were to be viewed on the layout plan form. I have, therefore, regarded this rectangular shape on the plan as an error that does not form part of the development proposed.

Main Issue

3. Section 192(2) of the Town and Country Planning Act 1990 (the Act) as amended indicates that if, on an application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in

¹ Plan number PLN-1

² Plan number PLN-1 Revision A, as referred to on the Council's decision notice.

any other case they shall refuse the application. My decision is, therefore, based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a LDC was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development referred to in the application would be lawful if begun on the date the application was made.

4. It is the appellant's case that the development referred to in the application (i.e. a building to provide a garage and work area) would be permitted by Class E, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the Order). This permits, among other matters, the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. There is no dispute between the parties that the building would accord with the criteria set out in part E.1 of the Order. The parties' dispute in this case is whether or not the building in question is required for a purpose incidental to the enjoyment of the dwellinghouse at the appeal site, having regard to the proposed use of the building and its size. This is the main consideration in this case.

Reasons

5. An essential feature of an incidental use is that it should have a functional relationship with the primary use (i.e. the dwelling at the appeal site in this case), and the relationship should be one that is normally found. The appellant has confirmed that the building would be used for the parking of three vehicles and as a games room to house a table tennis table. Whilst I note the Council's reference to case law in this regard³, it does not dispute that such uses are normally found in association with a dwelling.
6. Notwithstanding this, the Council questions the need for vehicle storage within a building and suggests that there is ample space within the site for off street parking for three vehicles. Whilst this may be the case, garages are a common type of outbuilding within the curtilage of a dwelling. The parking of vehicles within the building is, therefore, reasonable and sufficient in this case to demonstrate that the purpose of the building would be incidental to the dwelling, particularly as there are no other garage buildings on the site. Furthermore, I note that the appellant has not indicated that the vehicles would not be his own.
7. As for the other intended use of the building, its housing of a table tennis table would constitute a recreational activity that, again, is not unusual in association with a dwelling. It is unlikely that such an activity in the building would be materially different to any other incidental use of the building.
8. I note the Council's concerns with regard to the size of the building and that it makes further reference to the above mentioned caselaw in this regard. However, the intended use of the building would require a substantial floor area. The footprint of a domestic garage for a single vehicle might be in the region of 6 metres by 3 metres. Accordingly, a proposed building that is in the region of 9.6 metres by 5.6 metres would not be excessive for the keeping of

³ Emin v SSE & Mid Sussex DC [1989] JPL 909

three vehicles. Furthermore, I do not consider the scale of the intended use to be excessive. Indeed, it is not unusual for some households to own three or more vehicles. As such, I consider that the building would be genuinely and reasonably required to accommodate the use proposed and, thus would achieve that purpose.

9. I acknowledge that the building's footprint is large in comparison to that of the dwelling. However, I have also had regard to the extensive curtilage within which the dwelling sits. Within this context, the size of the proposed building alone does not lead me to conclude that its purpose would not be incidental to the enjoyment of the dwelling. That the building would be prominent within the street scene is not relevant to the matter before me.
10. The planning history for the site, including applications for an additional dwelling and flats, is also not relevant to the matter of whether or not the development now proposed would be lawful. The LDC granted in this case is for the development proposed in the application. It would not apply to development that differs from the proposed scheme.
11. The Council have referred to other appeal decisions and a decision on a planning application that it suggests are relevant. However, no further details have been provided of these specific cases in order for me to make an informed comparison. Notwithstanding this, I have determined the appeal having regard to the particular circumstances in this case and the evidence that is before me.

Conclusions

12. 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 a garage / work area was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

Formal Decision

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

J Moss

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 31 July 2019 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 garage / work area consisting of a building would have been permitted by Class E, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as it would have been within the curtilage of the dwellinghouse; would have been a building required for a purpose incidental to the enjoyment of the dwellinghouse as such; and would not have fallen within any of the criteria set out in part E.1 of the 2015 Order.

Signed

J Moss

INSPECTOR

Date: 24th September 2020

Reference: APP/Z0116/X/19/3239100

First Schedule

Garage / workshop area shown on plan number PLN-1 Revision A

Second Schedule

Land at 30 Honey Garston Road, Hartcliffe, Bristol BS13 9LT

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, would not have been 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:

by J Moss BSc (Hons) DipTP MRTPI

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Scale: Not to scale

