



## Appeal Decision

Site visit made on 8 December 2020

**by Richard S Jones BA (Hons), BTP, MRTPI**

**an Inspector appointed by the Secretary of State for Housing, Communities and Local Government**

**Decision date: 04 February 2021**

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### **Appeal Ref: APP/N0410/X/20/3259488**

### **30 Wellesley Avenue, Iver, SL0 9BN**

- 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 Robert Webster against the decision of South Bucks District Council.
  - The application Ref PL/20/0741/SA, dated 28 February 2020, was refused by notice dated 3 August 2020.
  - 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 ancillary residential outbuilding.
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### **Decision**

1. The appeal is dismissed.

### **Preliminary Matters**

2. The description of development in the banner heading is taken from the applicant's covering letter referred to in the application forms. This differs from that in the appeal form and Council's decision notice, both of which refer to an 'ancillary single storey outbuilding'. This does not affect my findings set out below.
3. 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, if it had been instigated or begun on the date of the application. Planning merits form no part of the assessment of a LDC, which must be considered in the light of the facts and the law.

### **Main Issue**

4. The main issue is whether the ancillary residential outbuilding would have been lawful on the basis that the development would have been granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

### **Reasons**

5. The appeal property comprises a two storey detached dwelling with a spacious rear garden. The single storey outbuilding is proposed to be sited at the end of the garden. The floor plan shows its use for domestic storage, studio, office, gym and toilet.

6. Subject to limitations, Article 3 and Schedule 2, Part 1, Class E(a) of the GPDO grant planning permission 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...'*

7. It is common ground that the proposal complies with the limitations set out in paragraphs E.1, E.2 and E.3 of the GPDO and I find no reason to conclude otherwise.
8. To be permitted under Class E, development must be within the 'curtilage' of a dwellinghouse. Curtilage is essentially land that has an intimate association with the building and can be seen to form part and parcel of the building.
9. The Council refer to hedging in the central section of the rear garden which in its view creates the impression of a separate residential curtilage relating to the proposed outbuilding. However, describing what is there as a hedge is somewhat misleading; the planting in the middle of the garden only runs across part of its width and sits within a bed made up of differing species with varying degrees of spacing. The planting provides a more ornamental appearance to the garden as a whole rather than a physical barrier creating separate and distinct areas. Moreover, the lawn that runs through and around the planting has the same manicured and domestic appearance throughout its length.
10. Consequently, the garden area to the front and rear of the planting has the appearance of being within the same enclosure and there is a clear visual and functional link between the rear part of the garden and the rear of the dwellinghouse.
11. Taken together, these factors indicate that despite its length, the rear part of the garden still retains an intimate association with the use of the dwellinghouse. I am satisfied therefore that the proposed outbuilding would fall within the curtilage of the dwellinghouse. Consequently, it does not matter that the proposed outbuilding and dwelling would be some 26m apart.
12. Both parties refer to the case of *Emin*<sup>1</sup> which confirmed that that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive.
13. It is the appellant's assertion that there is no 'requirement test' in respect of Class E. However, as held in *Emin*, in a case such as this, 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. That approach is broadly reflected in the appeal decisions referred to by the Council<sup>2</sup>.

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<sup>1</sup> *Emin v Secretary of State for the Environment and Mid-Sussex DC* (1989) 58 P&CR 416 [1989] GPL 909

<sup>2</sup> Appeal References: APP/G5180/17/14/3182482, APP/M5450/X/17/3178609, APP/M3645/X/17/3174454 and APP/A1910/X/17/3176507

14. I have noted the appellant's concerns over citing appeal decisions and accept that the individual proposals and circumstances of those cases may differ. Nevertheless, consistency in the approach to decision making is important and like cases should be decided in a like manner.
15. The appellant states that the provisions of Class E are generous and, as the appeal site is within his ownership, he can do as he wishes - within reason and staying within legal parameters. Again however, as found in *Emin*, the incidental use cannot rest solely on the unrestrained whim of the appellant himself. In my view, the appellant's example of a large building to accommodate antique steam rollers would fall within the context of an unrestrained whim, even if such a building could fall within the size limitations of paragraph E.1 of Class E. There is also a question of reasonableness.
16. Taking each of the proposed activities in turn, I consider that a gym is capable of being a use incidental to the residential use of the main house, particularly one which has a relatively modest floorspace of approximately 18m<sup>2</sup>.
17. A toilet would usually be comprised within the everyday living facilities of the dwelling, and thus be part of the primary living accommodation. Nevertheless, I can see no reason why such a facility should not be regarded as part of an incidental use if integrated within it and subservient to it. I also accept that a home office, which is not uncommon in a garden building, is incidental to the ordinary use of a home. However, these three uses combined amount to only about a third of the overall floor space within the outbuilding.
18. The largest parts of the building are given over to a studio and domestic storage, each accounting for a about a third of the remaining space. The appellant explains that the studio would be a flexible space which he would adapt to whatever ancillary use he is engaged in at the time. It is presently envisaged to be a hobby room but no specifics are given. The appellant also refers to the use of the space as a summer room. I find these explanations to be ambiguous and imprecise and do not identify the incidental quality of what is proposed in relation to the enjoyment of the dwellinghouse, or that such a significant area of floorspace is genuinely and reasonably required.
19. The other main space is shown as domestic storage. The appellant explains that his existing garage is full of domestic paraphernalia but that he wishes to use it for garaging a car. The appellant further explains that the space would be used to store items such a lawnmower, cycles, DIY equipment and other clutter that one often finds in such buildings. Whilst clearly an ancillary purpose, the area of the outbuilding given over to domestic storage would be much larger than a conventionally sized garage. I note the appellant's submission that with a 'large lawn and a great deal of associated garden equipment there is a need for further storage'. However, it has not been shown that the existing garage is unable to accommodate his storage requirements. It follows that it has not been shown, on the balance of probabilities, that the extent of additional storage is reasonably required.
20. Taken together the combined purposes would form a substantially sized building. The Council calculate the footprint would be around 140m<sup>2</sup>, slightly larger than the footprint of the existing dwelling. This is not disputed by the appellant. Whilst I accept that the overall floorspace would be less than the two storey dwelling and that the size of a building in relation to the main dwelling is

a relevant but not a conclusive factor, it would not be subordinate in my judgement.

21. On the evidence before me, it has not been demonstrated, on the balance of probabilities, that the proposed scale of activities and size of the building are genuinely and reasonably required or necessary in order to accommodate the proposed uses as incidental to the enjoyment of the dwellinghouse as such. The proposed development would not, therefore, constitute permitted development by virtue of the provisions of Schedule 2, Part 1, Class E of the GPDO.

*Other matters*

22. I note the appellant's reference to the LDC granted at 20 Wellesley Avenue in 2007<sup>3</sup>. However, I have limited details of what was submitted with that application. In any case, that building appears to be significantly smaller in footprint than that currently proposed. So does the building approved by the City and District of St Albans<sup>4</sup>, despite its use as a workshop for restoring small tractors. Even if that is incorrect, that a differing Council found the building to be reasonably required in the particular circumstances of that application does not justify granting a LDC in this particular case, which must be decided on the basis of its individual facts and circumstances.

**Conclusion**

23. For the reasons given above, I conclude that the Council's refusal to grant a LDC was well-founded and that the appeal should be dismissed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*Richard S Jones*

**INSPECTOR**

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<sup>3</sup> Application Ref: 07/01814/EUC

<sup>4</sup> The plans show that the building would have a footprint of approximately 103m<sup>2</sup>