
Appeal Decision

Site Visit made on 9 August 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2021

Appeal Ref: APP/M1595/X/20/3263141

The Willows, Kirkham Road, Horndon On The Hill SS17 8QE

- 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 Lewis against the decision of Thurrock Borough Council.
 - The application ref 20/00749/CLOPUD, dated 18 June 2020, was refused by notice dated 13 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 a single storey outbuilding (garage) with pitched roof not exceeding 3.9 metres in height.
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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 found to be lawful.

Reasons

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the developments proposed would, at the date of the applications, be lawful.
3. The Willows is a detached dwelling in a generous plot. There is a detached double garage and other smaller outbuildings and a pool within the rear garden. The decision turns on whether the proposed garage would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). The Council refused to grant the certificate as it determined that the garage is not required for a purpose incidental to the enjoyment of the dwellinghouse, and that the eaves height would exceed 2.5 metres.

Whether incidental

4. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. It has been established by case law that an incidental purpose should be functionally related to the

primary use, but not part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental will be a matter of fact and degree. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and to determine whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. The size of the building in relation to the dwelling is relevant but not a conclusive factor.

5. The garage would be a large building, providing bays for three vehicles. There is an existing garage building on site, which appears to have been extended and has a larger footprint than is shown on the submitted drawings. The appellant states that it is used for parking.
6. The appellant has explained that the outbuilding is required for the secure storage of his classic car collection. The building is designed for that purpose, with an undivided internal space that the appellant explains meets the Council's dimensions for garage parking, based on the minimum size for a garage space being 3 metres by 7 metres internally. The building has three garage doors to the front with two small windows to the side and a door to the rear which would give access to the rear garden. The Council acknowledges that the design is simplistic as would be expected of a residential garage.
7. The proposed garage would be of a size and design that is reasonably required to fulfil its purpose. While the collection of classic cars is the personal choice of the appellant, an outbuilding required in connection with a hobby is capable of being incidental. Moreover, it is not unusual to have garaging for several vehicles for a property in a large plot in a rural setting. Notwithstanding the footprint of the building in relation to the dwelling and the presence of the existing garage, the proposed building would not be excessive in relation to its purpose. I therefore conclude that the proposed building would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Eaves height

8. Paragraph E.1 of Schedule 2 Part 1 of the GPDO sets out the limitations to the permitted development right. Under E.1(f) development is not permitted if the height of the eaves of the building would exceed 2.5 metres. Article 2(2) of the GPDO sets out that the height of the building is to be construed as its height when measured from ground level. This means the level of the surface of the ground immediately adjacent to the building, and where the level of the surface of the ground is not uniform, it is the level of the highest part of the surface of the ground adjacent to it.
9. The Permitted Development Technical Guidance¹ provides guidance for Class E buildings on page 43. It refers to the guidance for measuring extensions on page 12. It explains that the eaves height of the building is where the lowest point of a roof slope meets the outside wall of the building, not including any overhang. It is measured from ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope. In this case, the ground gently slopes so that it is slightly higher at the front of

¹ MHCLG September 2019

the proposed building. From my reading of the drawings, I estimate the eaves height at the front of the building would be 2.5 metres, while at the rear it would be 2.6 metres. On this basis, the proposed building would comply with the limitation in paragraph E.1(f).

Conclusion

10. For the reasons set out above, I find that the outbuilding would reasonably be required for a purpose incidental to the enjoyment of the dwellinghouse as such, and would be permitted development under Schedule 2 Part 1 Class E of the GPDO.
11. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of an outbuilding (garage) 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 as amended.

N Thomas

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 18 June 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 operation is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas

Inspector

Date 18 October 2021

Reference: APP/M1595/X/20/3263141

First Schedule

Single storey outbuilding (garage) with pitched roof not exceeding 3.9 metres in height

Second Schedule

Land at The Willows, Kirkham Road, Horndon On The Hill SS17 8QE

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 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 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: 18 October 2021

by **N Thomas MA MRTPI**

Land at: The Willows, Kirkham Road, Horndon On The Hill SS17 8QE

Reference: APP/M1595/X/20/3263141

Scale: Not to scale

