



Appeal Decision

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 February 2022

Appeal Ref: APP/Z0116/X/21/3287533

1 Maidenhead Road, Bristol BS13 0PS

- 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 N Proud against the decision of Bristol City Council.
 - The application ref 21/05049/CP, dated 16 September 2021, was refused by notice dated 18 November 2021.
 - 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 detached garage.
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Decision

1. The appeal is dismissed.

Preliminary Matter

2. I consider that the appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based on the information already available.

Main Issue

3. The main issue in this appeal is whether the Council's refusal of the LDC application was well-founded. This turns on whether the appellant has shown that, on the balance of probability, planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

4. The appeal site contains an end of terrace dwelling. The dwelling occupies a spacious plot, adjacent to the junction of two residential roads. The proposal involves erecting a freestanding outbuilding towards the rear of the site.
5. At Article 3, Schedule 2, Part 1, Class E, the GPDO grants planning permission for the provision of an outbuilding within the curtilage of a dwelling. This is subject to the limitations on size, height and location set out in paragraphs E.1 to E.3 and is also provided that the outbuilding is required for a purpose incidental to the enjoyment of the dwelling as such.
6. The Council did not seek to argue that the outbuilding would be situated other than within the curtilage of the dwelling or that the relevant size, height and locational limitations in paragraph E.1 would not be met. In particular, there was no dispute that the size of the outbuilding would not exceed 50% of the

total area of the curtilage, that the overall height would not exceed 4 m, or that the outbuilding would be at least 2 m from the curtilage boundary. I have found nothing which would lead me to conclude otherwise. Paragraphs E.2 and E.3 are not relevant in this instance.

7. As noted above, to fall within Class E an outbuilding also has to be required for an incidental purpose. In the context of a dwelling, an incidental purpose is generally regarded as a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it but would not include use as primary living accommodation such as a bedroom, bathroom, or kitchen. The Government's Technical Guidance advises that a large range of buildings, including garden sheds, storage buildings and garages, can potentially fall within Class E where they can properly be described as having a purpose incidental to the enjoyment of the dwelling¹.
8. Relevant case law has established that in Class E, 'required' for an incidental purpose should be interpreted as 'reasonably required' and not rest on the unrestrained whim of a householder. The physical size of an outbuilding, alone or in relation to a dwelling, is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose².
9. The proposed use of the outbuilding is described as a garage, store and games room. The garaging of a couple of vehicles could reasonably be regarded as a subordinate activity connected with the running of the dwelling, whilst use as a games room is likely to fall within the wide range of day-to-day domestic leisure and recreational activities that occupiers of the dwelling might participate in. Similarly, a use for domestic storage associated with the dwelling would normally be regarded as an activity subordinate to and connected with the running of that dwelling. Therefore, it is not unreasonable to regard the stated proposed uses as ones which would be incidental to the enjoyment of the dwelling.
10. Nevertheless, the internal dimensions of the outbuilding are such that it is unlikely to be physically capable of use for the garaging of more than one vehicle. The outbuilding is unlikely to be deep enough to allow two vehicles to be garaged in a nose to tail arrangement, whilst its limited width together with the single garage door opening means that two vehicles are unlikely to be accommodated side by side. The submitted drawing did not show that the outbuilding could accommodate two vehicles. Garaging of a single vehicle is likely to only utilise around a third of the outbuilding's internal floor area. The outbuilding would therefore have an internal floor area significantly in excess of that which is likely to be reasonably required for the proposed use as a garage. There was no indication provided of the proportion of the internal floor area that it was intended to use for recreational purposes or for storage and in both instances, the nature of such activities was in any event unclear.
11. As the use of about two thirds of the floor area is unexplained and therefore uncertain, there is no assurance that the outbuilding would not be disproportionately large in relation to what would reasonably be required for the proposed uses stated. Also, the elevational openings shown on the

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019.

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

submitted drawing include a garage door and pedestrian door in the outbuilding front elevation, a corresponding pedestrian door and a window in the rear elevation together with three windows in the side elevation. This arrangement of elevational openings has not been explained by reference to the proposed activities. Moreover, the outbuilding has a much larger footprint when compared with that of the dwelling. Taken together, these factors create significant doubt over whether an outbuilding of this size is reasonably required, having regard to the uses to which it is proposed to be put.

12. In itself, a large curtilage has little bearing on whether an outbuilding otherwise falling within the physical limits set out in paragraph E.1 of Class E can be regarded as incidental to the enjoyment of a dwelling. The cumulative footprint of structures formerly occupying part of the site is not relevant in terms of assessing whether the outbuilding would be incidental.
13. Therefore, on the basis of the available evidence I am not persuaded that the outbuilding would be genuinely and reasonably required to accommodate the proposed uses and so achieve the purpose of being incidental to the enjoyment of the dwelling. The appellant did not advance any firm evidence which might have led to a different conclusion.
14. Accordingly, the appellant has not discharged the burden on them to show that, on the balance of probability, the outbuilding is granted permission by the GPDO at Article 3, Schedule 2, Part 1, Class E.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a new detached garage was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR