



Appeal Decision

by J Moss BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 July 2022

Appeal Ref: APP/X0360/X/21/3285604

Land at 1 Hill House Cottages, Milley Lane, Hare Hatch RG10 9TH

- 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 Daniel Nash against the decision of Wokingham Borough Council.
 - The application ref 212710, dated 9 August 2021, was refused by notice dated 16 September 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 the erection of an incidental residential outbuilding.
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Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Daniel Nash against Wokingham Borough Council. This application is the subject of a separate decision.

Preliminary Matters

2. Having considered the evidence submitted, the main considerations in this case and the particular matters in dispute, I am satisfied that I am able to determine the appeal without a site visit. The views of the main parties were, however, sought on this matter before my determination of the appeal and no objection was raised.
3. I have seen reference in the evidence to an existing garage in the approximate location of the outbuilding proposed. Whilst the works of demolition do not form part of the development before me, I note that the parties agree that it would be necessary to demolish the existing garage in order to erect the outbuilding subject of this appeal. I have, therefore, had regard to this in reaching my decision.

Main Issue

4. Section 192(2) of the Town and Country Planning Act 1990 as amended (the Act) 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 any other case they shall refuse the application.
5. I note the reference to the planning history for the site and enforcement investigations suggested to have been undertaken by the Council. These

matters are not, however, relevant to this appeal. My decision is based on the facts of the case and judicial authority. 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.

6. It is the appellant's case that the development would be permitted by Class E, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the Order). This permits, among other matters, the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. 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. I also note the suggestion by an interested party that the building would not be located within the curtilage of the dwellinghouse. These matters form the main considerations in this case.

Reasons

Curtilage

7. The Council has questioned the extent of the curtilage of the dwellinghouse at the appeal site. The area of the curtilage covered by the development is, of course, relevant when considering criterion E.1.(b) of Class E¹. However, the Council's refusal of the LDC application does not suggest that the development would be that referred to in criterion E.1.(b), and I have not been given any reason to find otherwise.
8. Notwithstanding this, I note the suggestion of an interested party, that the building would be located on land that does not form the curtilage of the dwellinghouse. Whilst there may be a degree of separation between the building and the dwellinghouse, I note that the appeal site has an unusual shape. It would appear that the land associated with the dwellinghouse is primarily to the side and front. The evidence before me does not support the suggestion that there is no functional link between the land and the dwellinghouse. In particular, all parties have referred to the existing outbuilding and do not dispute its use in connection with the dwellinghouse at the appeal site. This points to a use of the land in a way that is connected or attached to the dwellinghouse. Aside from the distance between the proposed building and the dwellinghouse, I am not advised of any physical means of separation between the two, such that the land on which the building would be located could not be regarded as being enclosed with the dwellinghouse.
9. I note the suggestion that the land in question has been used for vehicle sales. Notwithstanding that the evidence of this is limited, this would not prevent the land in question from forming part of the curtilage of the dwellinghouse. In particular I note that, despite the suggestion of other uses of the land, I can see that the Council has considered whether the development would be within the curtilage of the dwellinghouse and has concluded that it would.

¹ E.1.(b) - Development is not permitted by Class E if the total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).

10. Having regard to the evidence before me, it is more likely than not that the proposed building would be located on land within the curtilage of the dwellinghouse at the appeal site.

Incidental Purpose

11. An essential feature of an incidental use is that it should have a functional relationship with the primary use (i.e. the dwellinghouse at the appeal site in this case), and the relationship should be one that is normally found. In this regard, I note that the building would be used for the storage of 4 vehicles, as a workshop, and as a log store. The planning statement submitted with the LDC application suggests that the appellant is a keen driver and an amateur race car driver. The building would be used to store his vehicles, one of which is a race car and the other is a car used for spare parts. This hobby includes work to the appellant's cars, which requires the workshop space and an area to store the spares car.
12. The Technical Guidance on Permitted development rights for householders, dated September 2019, identifies garages as common buildings permitted by Class E. In this regard, I note that the Council does not suggest that both the storage of the appellant's vehicles and the carrying out of works on those vehicles by the appellant would not be purposes incidental to the enjoyment of the dwellinghouse at the appeal site. Indeed, such activities would be commonplace in a domestic garage. I would conclude the same for the log store, as well as the workshop area, which the appellant indicates would also be used for the storage of ordinary domestic items and for the maintenance of the dwellinghouse at the appeal site. I am, therefore, satisfied that the uses to which the building would be put would be incidental to the enjoyment of the dwellinghouse.
13. I note the concerns of interested parties with regard to a possible use of the building for commercial purposes. This is not, however, supported by the appellant's account of how he intends to use the building. Should the building be put to a use that is materially different to that stated in the application, it would not have the benefit of any certificate granted in this case.
14. Notwithstanding the above, I note the Council's concerns with regard to the size of the proposed building and its suggestion that the scale of the accommodation proposed for the uses indicated by the appellant would mean that the building would not be for a purpose incidental to the enjoyment of the dwellinghouse. Of concern is that the proposed accommodation comprises separate areas for the storage of all of the appellant's vehicles, for the storage of a car for spares, for a workshop, and for a log store. In this regard, the parties have referred to the case of *Emin v SSE & Mid Sussex DC* [1989] JPL 909.
15. That decision is relevant to the case before me as it indicates that, even if the nature of the activities carried out in a proposed building were considered to be incidental or conducive to the very conditions of living in the dwellinghouse (which is a matter not in dispute in this case), the scale of those activities is important. The case suggests that, if the nature and scale of such activities go beyond a purpose merely incidental to the enjoyment of the dwellinghouse as such, they may constitute something greater than a requirement related solely to that purpose. I note the parties' reference to the judgment, which states 'the fact that such a building has to be required for a purpose associated with

the enjoyment of a dwelling house cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case’.

16. The judgment informs that the test to be applied is ‘whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house’. It also states that ‘when a matter is looked at as a whole, size may be an important consideration but not by itself conclusive’.
17. The proposed building subject of this appeal would provide space to accommodate four vehicles. I can agree with the appellant, that it would not be unreasonable for even a small household to own more than one vehicle, and there is no suggestion that the four vehicles referred to by the appellant are in addition to any other household vehicles. Accommodation for the storage of the household vehicles would not be unreasonable.
18. Notwithstanding this, the appellant’s hobby has resulted in the need for internal space in addition to what might be expected in a domestic garage. Of particular note is the accommodation proposed for the race car and spares car. Whilst these activities would necessitate a substantial floor area, the building would accommodate only one actively used race car, which indicates that the scale of the hobby activities within the building would be reasonable. Having regard to the appellant’s reasons for the need to accommodate both his race car and a spares car, I do not consider this proposed accommodation to be excessive. Indeed, having regard to the size of the building and the shape of its footprint, it would appear that it has been designed with its intended purpose in mind.
19. The workshop area would have the dual purpose of meeting the needs of the hobby, as well as household maintenance and storage. I do not consider a separate area for this purpose to be unreasonable and the area set aside for this dual purpose would not be excessive. I conclude the same with regard to the proposed log store area.
20. I acknowledge that the footprint of the proposed building would be comparable to that of the dwellinghouse. However, the building would be put to multiple uses that in other circumstances might be accommodated in a number of outbuildings, rather than the single building proposed in this case. The size of the building is indicative of the number of activities it would accommodate, each of which I have concluded would be incidental to the enjoyment of the dwellinghouse.
21. As a general observation, I note that the building has a very shallow sloping roof and that the parts of the building to be used for vehicle storage would only just accommodate vehicles of the size indicated on the plan. In this regard, the accommodation comprised in the building would not exceed that needed for its intended purpose. Indeed, there is no suggestion from the Council that it would.
22. I note the Council’s reference to an appeal decision, the reference for which has been provided. I have not, however, been provided with the decision in that case or any other details of the development proposed, such that I can understand the circumstances that led to the suggested comments of the

Inspector. I am unable to make an informed comparison with the development proposed in that case and that before me.

23. All things considered, I conclude that as a matter of fact and degree the proposed building would be required for a purpose incidental to the enjoyment of the dwellinghouse. Accordingly, I am satisfied that on the balance of probability the development as proposed would be permitted by Class E, Part 1, Article 3, Schedule 2 of the Order.

Conclusions

24. 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 the erection of an incidental residential outbuilding 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

25. 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 9 August 2021 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 erection of an incidental residential outbuilding would have been permitted by Class E, Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

J Moss

INSPECTOR

Date: 19 July 2022

Reference: APP/X0360/X/21/3285604

First Schedule

Erection of an incidental residential outbuilding shown on the plans referenced DN/O/0961101-V1 and DN/O/0961102—V1.

Second Schedule

Land at 1 Hill House Cottages, Milley Lane, Hare Hatch RG10 9TH

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: 19 July 2022

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Scale: Not to scale

