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# Appeal Decision

**by Thomas Shields DipURP MA MRTPI**

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

**Decision date: 11 August 2022**

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**Appeal Ref: APP/B1930/X/21/3288857**

**12 Marshalls Heath Lane, Wheathampstead, St. Albans, AL4 8HR**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs & Mrs Andy Willis against the decision of the St Albans City Council.
- The application Ref. 5/21/2436, dated 23 August 2021, was refused by notice dated 4 November 2021.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is a single storey rear garden outbuilding set 2m from the north and east boundaries of the application site.

**Summary of Decision: The appeal is dismissed.**

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## Procedural matters

1. Since the outbuilding is proposed, rather than existing, and having studied the detailed plans, documents, photographs and other appeal submissions from the parties, I am satisfied a decision can be made without a physical inspection of the site. I have therefore determined the appeal on this basis, made solely on matters of fact, planning law, and application of judicial authority.
2. In order for a LDC to be granted the onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed development would be lawful. The relevant date for determining lawfulness is the date of the application.

## Reasons

3. The main issue is whether the Council's decision not to issue an LDC was well founded. It turns on whether the proposed outbuilding would be lawful by benefitting from the planning permission ("permitted development") available via Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order").
4. Subject to size and other limitations Class E(a), Part 1, of Schedule 2 includes the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of that dwellinghouse as such. The parties agree that the limitations (E.1 to E.3) to Class E(a) would be satisfied, and I come to the same conclusion. Consequently, the only point of dispute between the parties is whether the proposed outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse.

5. As shown on the application drawings<sup>1</sup> the extended bungalow has a footprint of a little over 220m<sup>2</sup>. The proposed rectangular outbuilding would occupy a little less than one third of the garden space at the rear of the bungalow. Externally it would measure 29.3m length x 6m width, resulting in an overall footprint of 175.8m<sup>2</sup>. The gross internal floor area would be a little less than that figure.
6. *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416 is a judgement relevant to this appeal. It established that the term “incidental” was held to connote an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. For the purposes of applying Class E the term “required” should be interpreted as “reasonably required” rather than the “unrestrained whim” of the occupier. Also, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration, although not conclusive by itself.
7. The critical test to be applied is firstly whether the uses of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain ancillary and subordinate to the main use of the property as a dwellinghouse, and secondly; whether the proposed outbuilding is “reasonably required” in order to accommodate those uses.
8. The parties refer to other planning application and appeal decisions. However, while the developments, circumstances, and other physical factors in those cases may hold some similarities with this appeal, they are not the same as the appeal before me. Also, while the Council’s approach of direct comparison of floorspace in the outbuilding with particular room sizes in the dwellinghouse is material, it is not determinative. As is clear from *Emin*, each case must be individually judged on a fact and degree basis in the light of the particular circumstances. That is the approach I take here.
9. The total area of internal floorspace of the outbuilding would be greater than the footprint of the original bungalow, but smaller than the bungalow as it exists now. In the context of the size of the existing bungalow, occupied by a family of 4 with visiting relatives, and the size of the overall planning unit, I consider the outbuilding would be of a substantial size, although this is not a decisive factor by itself.
10. Turning to the internal floor areas for specified purposes, the outbuilding would comprise a home office (17m<sup>2</sup>), a summer room (49m<sup>2</sup>), a music room (32m<sup>2</sup>), a gymnasium (31m<sup>2</sup>), a changing room (7m<sup>2</sup>) and three smaller rooms for cupboard storage, a plant room and toilet facilities. I am satisfied that such activities and uses are of types that would be ordinarily incidental and subordinate to the use of the main dwellinghouse, and the Council does not argue otherwise.
11. As to whether the floorspace for those activities are reasonably required in order to accommodate the stated uses, I find that the 17m<sup>2</sup> office space is not excessive or disproportionate in a domestic setting. I make the same finding in respect of the other uses and spaces other than in relation to the summer room and the music room. I turn to these matters next.

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<sup>1</sup> AR2266/PD/7/02

12. The appellant's explanation for the 49m<sup>2</sup> size of the summer room is that it would provide additional living space as a lounge area for the enjoyment of the whole family, although I note that it would "*primarily be used by the appellant's growing children who now need a space to play with their friends when they visit*". Given the size of the existing lounge and other space within the bungalow for domestic activity, I find the size of the proposed summer room to be excessively large and hence not reasonably required.
13. Notwithstanding the above, the submitted drawings also indicate the material commencement of a conversion of the front double garage to a play room. This is not referred to by either party. However, if it were intended to be a play room it adds further weight to my finding that the proposed summer room is an over-provision of space that is not reasonably required.
14. With regard to the proposed music/art room, the proposed 32m<sup>2</sup> also seems to me to be unjustified as being reasonably required for the purposes of the children's art activities and music practice, particularly so if such activities must be disaggregated into a separate room rather than being activities that could be incorporated into a summer room use, and bearing in mind also the existing space for domestic activities in the main dwellinghouse.
15. Taking account of all the evidence before me, I find the proposed outbuilding to be of a substantial size which has not been fully justified as being reasonably required for its intended purposes. As such it would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse and therefore would not be permitted development.

### **Formal Decision**

16. For the reasons given above, I conclude, that the Council's refusal to grant a lawful development certificate, for the proposed single storey rear garden outbuilding set 2m from the north and east boundaries of the application site, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*Thomas Shields*

INSPECTOR