



Appeal Decision

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH JP

an Inspector appointed by the Secretary of State

Decision date: 30 September 2022

Appeal Ref: APP/A1530/X/22/3291073

Somerson House, New Road, Aldham, Colchester, Essex CO6 3PN

- 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 Keiron Shelton against the decision of Colchester Borough Council.
 - The application Ref 213191, dated 10 November 2021, was refused by notice dated 12 January 2022 .
 - 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 outbuilding used for storage of vehicles and other household paraphernalia, and a gym.
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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 considered to be lawful.

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

3. General planning permission for a building within the curtilage of a dwellinghouse incidental to its enjoyment is given by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') subject to exceptions and limitations (E1, E2, E3).
4. According to the delegated report on the application, the Council does not dispute that the proposal would meet all the exceptions and limitations in respect of Class E *were* the building considered to be incidental to the enjoyment of the dwellinghouse on the site. I have seen no evidence which contradicts or conflicts with this agreed position between the parties, and accordingly find it to be the case as a matter of fact.
5. The Council's sole foundation for refusing the LDC appears to be an argument that the development would not be incidental to the enjoyment of the dwellinghouse because of its proposed size of 280m². However, established case-law (such as *Emin v SSE & Mid Sussex DC [1989]*) confirms that regard should be made to the use to which it is proposed that the outbuilding would be put and of the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwelling.

6. The appellant says that the covered space to be provided by the proposed outbuilding is required for the storage of his personal collection of 18 supercars which are at present dispersed over several sites away from his home.
7. In my view, this proposed use of the outbuilding would provide clear incidental quality as regards the enjoyment of the dwelling. Consolidating the vehicles on one site at the owner's address would enable him to appreciate the collection together at home at his convenience and would accordingly enhance the enjoyment of the dwelling, as would a gym and space for the storage of household paraphernalia. I am satisfied that a building of such size would be genuinely and reasonably required and not excessive for these purposes, being also subordinate to the large, detached dwelling set within extensive grounds.
8. For the above reasons, I do not consider that the storage of private cars in these circumstances would constitute an 'unrestrained whim' as implied by the Council.
9. The Council's argument that the size of the proposed outbuilding must render it unlawful is undermined by the case summaries it has pasted into its officer report (from the Planning Jungle website) since it can be seen that a small outbuilding (41m²) was found not to be not incidental, while an outbuilding similar in size (270m²) to the appeal development was found to be incidental. This demonstrates rather that it is necessary to apply the principles established by case law, as I have done in this Decision, rather than for size to be the decisive factor in isolation.

Conclusion

10. 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 an outbuilding used for storage of vehicles and other household paraphernalia, and a gym, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Andrew Walker

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 10 November 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 development benefits from general planning permission as a building within the curtilage of a dwellinghouse incidental to its enjoyment by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Andrew Walker

Inspector

Date 30 September 2022

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First Schedule

Outbuilding used for storage of vehicles and other household paraphernalia, and a gym.

Second Schedule

Land at Somerson House, New Road, Aldham, Colchester, Essex CO6 3PN

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 use /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 /were not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the use /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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: 30 September 2022

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Land at: Somerson House, New Road, Aldham, Colchester, Essex CO6 3PN

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Scale: Do not scale

