



Appeal Decision

Site visit made on 24 April 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2023

Appeal Ref: APP/P0240/X/22/3305621

1 Periwinkle Lane, Dunstable, LU6 3NP

- 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 Tony Prosser against the decision of Central Bedfordshire Council.
 - The application ref CB/22/01993/LDCP, dated 18 May 2022, was refused by notice dated 3 August 2022.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
 - The development for which an LDC is sought is construction of garage.
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Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing development which is considered to be lawful.

Reasons

2. 1 Periwinkle Lane is an end-terraced two-storey dwelling with a substantial rear amenity area that is part of the curtilage of the dwellinghouse. The Appellant is seeking an LDC for the construction of a garage within the amenity area. Class E of Schedule 2 of Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) states that provision within the curtilage of the dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development subject to size and other limitations. The Council accepts that the proposed garage satisfies all of the size and other limitations but concluded, overall, that the garage is not "...genuinely and reasonably required for such an incidental use".

3. In reaching their conclusion the Council compared the floor area of the proposed garage, about 90 square metres, with the floor area of the dwelling, about 30 square metres, and the floor area of existing outbuildings, about 52 square metres. This comparison led to the conclusion that "...the proposed and existing outbuildings exceed the existing floor area of the dwelling and would not appear subordinate or incidental to the host dwelling". Nowhere in the GPDO does it state that an outbuilding, built under permitted development rights, must appear to be subordinate or incidental to the dwellinghouse. However, case law indicates that relative size can be a consideration but is not necessarily conclusive. Importantly, such an outbuilding must be 'genuinely and reasonably required or necessary in order to accommodate the proposed use or activity'.

4. The curtilage of the dwellinghouse is significantly larger than that of the two neighbouring terraced dwellings of a similar size; the curtilage extends to the rear of the neighbouring properties. In this regard the size of the proposed garage, given also that it would be single storey and would be some distance from the terrace of dwellings, and notwithstanding the existing outbuilding, is not a reason to withhold an LDC. The Appellant has had a specific interest in motor cars for a number of years and has a small collection, including four American Chevrolets, two of which are pick-ups of some vintage. They are stored within the curtilage of the dwellinghouse, mostly outside but also in the existing outbuilding. The proposed garage would enable the Appellant to store three more cars inside rather than outside. The desire to garage three more cars is clearly genuine and understandable. The proposed garage is, as a matter of planning judgement, reasonably required to accommodate the proposed use.

5. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for the construction of a garage at 1 Periwinkle Lane, Dunstable was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the Act have been exercised accordingly.

John Braithwaite

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 May 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched 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 operations are for a purpose incidental to the enjoyment of the dwellinghouse and are genuinely and reasonably required to accommodate the proposed use.

Signed

John Braithwaite

Inspector

Date: 27 April 2023

Reference: APP/P0240/X/22/3305621

First Schedule

The construction of a garage

Second Schedule

Land at 1 Periwinkle Lane, Dunstable LU6 3NP

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, 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 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: 27 April 2023

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Scale: Not to Scale

