



Appeal Decision

Site visit made on 25 September 2023

by David Jones BSc (Hons) MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 October 2023

Appeal Ref: APP/P0119/X/23/3321551

Barn 2, Brinkmarsh Lane, Falfield, South Gloucestershire GL12 8PT

- 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 John Willmott against the decision of South Gloucestershire Council.
 - The application ref P22/06057/CLP, dated 19 October 2022, was refused by notice dated 4 January 2023.
 - 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 described as 'Construction of new outbuilding. Erection of garden fences'.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed development which is found to be lawful.

Preliminary Matters

2. On the application form the appellant has ticked the box to indicate the appeal is against existing development under section 191 of the Act. However, it is clear from the submitted evidence and from my own observations during the site visit that the appeal concerns 'proposed' development for building operations under s192(1)(b).
3. From the application form and accompanying documents and plans, it is also clear that the proposal has three elements to it. These are the proposed erection of an outbuilding, erection of fencing, and installation of a hardstanding area. I have therefore determined the appeal on that basis.

Main Issue

4. The main issue is therefore whether the Council's refusal to grant the LDC was well founded. This turns on whether the proposed operations would benefit from planning permission granted by Article 3(1) and Classes E and F of Part 1, and Class A of Part 2 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the GPDO).
5. The single reason for refusal contained within the Council's decision notice relates to the proposed outbuilding. There is no disagreement between the parties that the outbuilding would comply with the size and other limitations within paragraph E.1 of Class E, and I concur with that view. The single point of dispute is whether the proposed outbuilding would meet the requirement of

E(a) that it would be “required for a purpose incidental to the enjoyment of the dwellinghouse as such”.

Reasons

Outbuilding

6. The appeal property is a single storey former barn known as “Barn 2” which has recently been granted planning permission¹ for a change of use from an office to a dwellinghouse. There is no dispute that this planning permission has been implemented and that the proposed outbuilding would be within the curtilage of the dwellinghouse. It is stated that the outbuilding would be used to house a home workshop/office, project space, and garages.
7. Despite meeting the various size and locational limitations of Class E the Council maintains that, given its size and scale, the outbuilding cannot be considered to be required for purposes incidental to the enjoyment of the dwellinghouse.
8. In assessing its scale, the Council has compared the footprint of the proposed outbuilding to the footprint of the host dwelling “Barn 2”. As the outbuilding’s footprint of 145sqm would be similar to that of the host dwelling, the Council considers the outbuilding to be excessive in scale and not subservient or incidental to the enjoyment of the dwellinghouse.
9. However, none of the limitations or conditions within Class E of the GPDO state that the footprint of an outbuilding cannot be similar to, or greater than, that of the host dwelling. In *Emin v SSE and Mid Sussex District Council [1989] 58 P & CR 416* it was established that whilst the size of the building may be an important consideration when determining if a building is to be used incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive. In particular, it must also be established that the outbuilding is genuinely and reasonably required, and in *Wallington v Secretary of State for Wales [1991] 1 PLR 87* it was established that a purpose incidental to a dwellinghouse should not rest on the whim of the person who dwelt there.
10. The Council accept that there is no suggestion that the outbuilding would be used for anything other than domestic purposes associated with a family home, however they consider that insufficient information has been provided to demonstrate why a building of this scale is required.
11. In this case details of the proposed use of the building have been provided. In terms of the garaging, it is not uncommon for households to have two, or indeed more, cars. In addition, the appellant states that space is required for the storage of bikes, kayaks, furniture, and other personal belongings. The proposed outbuilding would provide sufficient space for at least two vehicles as well as the storage of other domestic items and paraphernalia. Given the absence of any existing garaging or outbuildings associated with “Barn 2”, the ability to provide secure and covered parking for vehicles and storage space is not unreasonable. Although no indication has been given by the appellant to how the floorspace may be allocated between the garaging and the storage of other items, given the modest size of the host property itself, the need for storage perhaps becomes greater still.

¹ Council Reference: P22/01555/F

12. The remainder of the outbuilding would house a home workshop/office which the Council state would have an internal area of approximately 30sqm. This space would be used by the appellant, who is a carpenter, for pleasure and hobby purposes following his retirement. The area set aside for such activities does not appear to me to be excessive. I therefore see nothing wrong with regard to the size and scale of the outbuilding relative to that of the host dwelling, or to its relatively large curtilage which stands at around 1300sqm.
13. The footprint of the outbuilding would be similar to that of the host dwelling. However, the intended uses are incidental to the enjoyment of the dwellinghouse and, particularly given the modest size of the host dwelling and the absence of any existing outbuildings, the scale of the outbuilding is no more than it needs to be. There is also no evidence to indicate that the proposed outbuilding rests on the "whim" of the appellant. Accordingly, I am satisfied that on the evidence available to me that the outbuilding would be lawful under Class E of Part 1 of the GPDO.

Hardstanding

14. Class F of Part 1 of the GPDO permits the provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such. The only relevant conditions set out in paragraph F.2 relate to areas of hardstanding that would be situated between a wall forming the principal elevation of the dwellinghouse and a highway.
15. The proposed area of hardstanding would clearly be within the curtilage of the dwellinghouse and would not be situated between a wall forming the principal elevation and the highway. The Council have also not raised any concerns that the hardstanding area would not be for a purpose incidental to the enjoyment of the dwellinghouse, and I find no reason to reach an alternative conclusion. Accordingly, the proposed hardstanding therefore constitutes permitted development under Class F of Part 1 the GPDO.

Fencing

16. Class A of Part 2 of the GPDO permits amongst other things the erection of fences. Paragraph A.1 sets out various limitations concerning the height and location of any fence. The relevant limitations in this case are that the height of any fence erected or constructed cannot exceed 2m above ground level, or 1m above ground level if adjacent to a highway used by vehicular traffic.
17. The submitted block plan details that a 2m high fence would be erected along the southern boundary of the appeal site in-between "Barn 1" and "Barn 2". As the fence would run through the site and would not be erected or constructed adjacent to a highway used by vehicular traffic, the proposed fencing would be permitted development under Class A of Part 2 of the GPDO.

Conclusion

18. 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 was not well-founded and the appeal succeeds. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

David Jones 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 19 October 2022 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The proposed outbuilding would be reasonably required for purposes incidental to the enjoyment of the dwellinghouse, and therefore meets the requirements and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). Planning permission for the development is therefore conferred by Article 3(1) and Class E of Schedule 2, Part 1 of the GPDO.

The proposed fencing would be permitted development under Class A of Part 2 of Schedule 2 of the GPDO for which planning permission is granted by Article 3(1) of the Order.

The proposed hardstanding would be permitted development under Class F of Part 1 of Schedule 2 of the GPDO for which planning permission is granted by Article 3(1) of the Order.

Signed

David Jones

Inspector

Date: 20 October 2023

Reference: APP/P0119/X/23/3321551

First Schedule

Construction of new outbuilding. Erection of garden fences. Installation of hardstanding.

Second Schedule

Land at: Barn 2, Brinkmarsh Lane, Falfield, South Gloucestershire GL12 8PT

IMPORTANT NOTES – SEE OVER

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: 20 October 2023

by David Jones BSc (Hons) MPlan MRTPI

Land at: Barn 2, Brinkmarsh Lane, Falfield, South Gloucestershire GL12 8PT

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Scale: Not to Scale

