



Appeal Decision

Site visit made on 12 September 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30TH OCTOBER 2023

Appeal Ref: APP/T2405/X/23/3320933

New Holme, Stanton Road, Elmeſthorpe, Leicestershire LE9 7SH

- 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 and Mrs Hatson against the decision of Blaby District Council.
 - The application ref 22/1197/CLP, dated 8 December 2022, was refused by notice dated 3 February 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 development is sought is a new outbuilding to accommodate garaging, storage, workshop, home office and gym.
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Decision

1. The appeal is allowed and attached to this decision is a Lawful Development Certificate (LDC) describing the proposed development which is considered to be lawful.

Background and Preliminary Matters

2. The relevant date for determining whether the outbuilding subject of the appeal would be lawful is the date the application was submitted to the Council, which is 8 December 2022. For a LDC to be granted under s192 of the Town and Country Planning Act 1990 it is necessary for the appellants to demonstrate, on the balance of probability, that the development would have been lawful. Matters such as planning policies and the effect of the proposed outbuilding on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.
3. The appeal site has been subject to planning history that is relevant to the determination of the LDC. Namely, an application for the residential use of land to the rear of New Holme was refused but allowed on appeal in November 2020¹. The land was formally an agricultural field, but the Inspector determined that since 1995 the land where the outbuilding has been proposed had been used for a purpose incidental to the enjoyment of the dwellinghouse. Also, the Inspector concluded that as a matter of fact and degree, and based on the evidence before her, the land can be treated as being within the curtilage of the dwellinghouse.
4. The appellants have submitted a site location plan, site block plan as well as detailed floor and elevation plans of the outbuilding. The plans show the proposed outbuilding as being approximately 20.5 metres(m) in length x 9.5m wide, and 2.5m and 4m in height to the eaves and ridge respectively. It is

¹ Appeal reference APP/T2405/X/19/3232820

located centrally in the extended garden away from the house. Internally the building is shown to have a garage, workshop, mower and trailer storage, home office, gym and hobby room. There are also three statutory declarations from the appellants and their daughter setting out the appellants' requirements in respect of the use and accommodation of the outbuilding.

5. The Site Block Plan reference H08 (90) 02 provides a 1:500 scale plan of the land, host dwelling, immediate streets, and neighbouring properties. It shows the proposed outbuilding location and its footprint, together with an access point from Burbage Common Road. The plan also shows what appears to be a hardstanding from the access and around part of the outbuilding. Despite what it appears like, there is no annotation to indicate that this area is an area of hardstanding or that it forms part of the development proposed.
6. For the avoidance of doubt, the hardstanding area described above has been highlighted in blue on the attached plan to the Decision. As a hardstanding would be operational development that is not described on the Application Form, it has not been considered as part of the assessment of the LDC. The LDC appeal relates to the outbuilding only, and it is indicated in the 'Notes' section of the LDC that any operation, such as a hardstanding that is materially different from that described, could be a breach of planning control which is liable to enforcement action by the Council.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

8. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for classes of development listed in Schedule 2. Subject to several limitations, Class E(a), Part 1, Schedule 2 includes the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of that dwellinghouse. It is clear from the Council's reason for refusal and associated documentation that there is no disagreement between the parties that the limitations (E.1 to E.3) to Class E(a) are not breached, and I come to the same conclusion.
9. The single point of dispute between the parties, and upon which the main issue turns, is whether the size and location of the proposed outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse.
10. The appellants contend that the proposed uses would be incidental to the enjoyment of the dwellinghouse. The Council accept that an outbuilding containing the uses proposed could be considered incidental to the enjoyment of a dwellinghouse in principle. However, their concerns are in respect of the scale of the outbuilding and its location away from the main house. Their Statement of Case specifically identifies the footprint of the proposed outbuilding being greater than the footprint of the main house and, thus, would not be commensurate to it in terms of size and scale.

11. There is no definition of 'incidental' in the GPDO, but the Technical Guidance for Householder Development² advises that a purpose incidental to a dwellinghouse would not cover normal residential uses such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.
12. Both parties refer to the judgment in *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416, which I agree is directly relevant to this appeal. It establishes 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.
13. The three statutory declarations from the appellants set out in detail the space requirements in respect of the home office, garaging for the resident's vehicles and workshop related uses, space for gym equipment as well as the storage space for a ride on mower and trailers required for the maintenance of the large garden. As indicated previously, the Council has outlined that the uses could be incidental to the main use of the dwelling house, and I do not disagree. The uses are not primary accommodation and the appellants have provided detailed evidence to demonstrate that the size of the outbuilding is reasonably required for the incidental uses set out. In this respect, the outbuilding would be subordinate to the dwellinghouse in land use terms and the size is reasonably required.
14. When the incidental uses are combined into one building, I acknowledge that the outbuilding is large. However, there is no limit to the size of the outbuilding when compared to the host dwelling in the GPDO. Furthermore, there is no information in the case law highlighted that suggests a building cannot be incidental when the footprint is greater in size than the host dwelling. Class E of the GDPO does not seek to control the position of outbuildings within the curtilage.
15. The physical size is of some relevance, but that should not be the only consideration, and is most relevant when considering the scale and nature of the activities proposed in the outbuilding. For example, if the outbuilding is larger than the dwelling but is only proposed for storage of a single car, then it could be concluded that the size is based on unrestrained whim of the appellants rather than what is reasonably required for the incidental use. The appellants, however, have clearly detailed why the size of the outbuilding is reasonably required when considering how it will be used.
16. Accordingly, I accept that the proposed building is large, but it complies with the limitations set out in E.1 to E.3 of Class E(a) as well as being subordinate to the dwelling in land use terms. I have taken account of the Council's concerns over the size and location relative to the host dwelling but based on the detailed evidence submitted with the appeal, I am satisfied that the use of the outbuilding is incidental to the enjoyment of the dwellinghouse, and the size is reasonably

² Permitted development rights for householders Technical Guidance, DCLG (2019)

required. Consequently, the proposed outbuilding would be lawful and falls within Schedule 2, Part 1, Class E of the GPDO.

Other Matters

17. The Council has referred to previous appeal decisions³. However, I do not have the full details of these cases, so it is difficult to directly compare. In this respect it is likely that the proposed developments, circumstances, and other physical factors in those cases are not the same as the appeal before me. I have therefore taken them into account in so far as they provide useful background information, but each case must be individually judged on a fact and degree basis in the light of the particular circumstances. That is the approach I have taken here.

Conclusion

18. For the reasons given above, I conclude on the evidence available that the Council's refusal to grant a certificate of lawful development in respect of a new outbuilding to accommodate garaging, storage, workshop, home office and gym at New Holme, Stanton Road, Elmesthorpe, Leicestershire LE9 7SH was not well-founded. The appeal should succeed and I, accordingly, exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M. P. Howell

INSPECTOR

³ Appeal references: APP/G5750/X/19/3238377, APP/Y3615/X/20/3244438, APP/T2405/X/21/3266587



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 8 December 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 reason:

The proposed development would have benefitted from deemed planning permission pursuant to Article 3 of, and Class E(a) of Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

M. P. Howell

Inspector

Date **30th OCTOBER 2023**

Reference: APP/T2405/X/23/3320933

First Schedule

A new outbuilding to accommodate garaging, storage, workshop, home office and gym.

Second Schedule

Land at New Holme, Stanton Road, Elmhurst, Leicestershire LE9 7SH

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, such as the possible hardstanding highlighted in blue, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the Council.

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: **30th OCTOBER 2023**

by M. P. Howell Dip TP MRTPI

Land at: New Holme, Stanton Road, Elvesthorpe, Leicestershire LE9 7SH

Reference: APP/T2405/X/23/3320933

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