



## Appeal Decision

Site visit made on 12 December 2023

**by S A Hanson BA(Hons) BTP MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 9 January 2024**

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**Appeal Ref: APP/R1845/X/23/3321716**

**Fingerpost Cottage, Cleobury Road, Far Forest, Kidderminster DY14 9TA**

- 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 Mark Gordon against the decision of Wyre Forest District Council.
  - The application ref 23/0161/CLP, dated 6 March 2023, was refused by notice dated 20 April 2023.
  - 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 a certificate of lawful use or development is sought is described as a proposed concrete slab and erection of timber triple bay single storey garage.
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### Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

### Preliminary matters

2. Section 192(2) of the Act indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application.
3. In an appeal under s195 of the Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.
4. The application for the LDC sought a determination as to whether the concrete slab, which is in situ as a base for the garage, would be lawful. This does not form part of the Council's refusal and I have no reason to doubt that it would not be considered permitted development by virtue of Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").

### Main Issue

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposed garage building would benefit from planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 of the GPDO.

## Reasons

6. Fingerpost Cottage is a detached dwellinghouse, set back from the main road behind three properties which face onto the public highway. There is a garden building to the front of the house and a lean-to timber structure attached to the rear of the property. The dwelling sits in a generous plot with the driveway to the front and side and garden to rear and side.
7. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the personal enjoyment of the dwellinghouse as such, subject to the limitations set out at Classes E.1, E.2 and E.3.
8. While it is clear from the Council's reason for refusal and appeal submissions that there is agreement that the proposal falls within the physical restrictions of Class E, including those limitations set out in E.1, E.2 and E.3; the development would only be permitted development if the building was required for a purpose incidental to the enjoyment of the dwellinghouse as such.
9. The Council refused to grant the LDC on the grounds that the use of the building would not be lawful. This is because it was considered that the size of the building would be much larger than genuinely and reasonably required to serve its specified incidental purposes. Accordingly, consideration of this appeal raises two questions: is the purpose of the proposed building incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed building reasonably required for that purpose.
10. While there is no statutory definition of 'incidental' in the GPDO, an incidental use is one which is functionally related to the primary use of the planning unit, which in this case is residential. Where the primary use is as a dwellinghouse, the parking of vehicles for the domestic use of the occupier of the house would be an incidental activity and so too would the repair of the occupier's own vehicles. This is because those are uses which differ in character to the residential use but are being carried out as a function of the enjoyment of the dwellinghouse. The established principle is that the relationship should be one that is normally found and whether a building is required for an incidental purpose will depend on a fact and degree assessment.
11. For a building to be 'required for a purpose incidental to the enjoyment of the dwellinghouse', the Courts have interpreted 'required' as meaning 'reasonably required'. In the context of Class E this translates as reasonably needed for that purpose. The appellant does not need to somehow prove that the building would be 'necessary'. However, whether a building is 'reasonably required' cannot rest solely on the unrestrained whim of the householder, but equally does not need to be anything other than sensibly related to their enjoyment of the dwellinghouse. Judgement as to whether such a building would be reasonably required is a matter of objective fact and degree. The actual physical size of the building is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse.

12. The application plans show that the garage would occupy a position within the residential curtilage some distance from the side of the dwelling. It would face the host dwelling and be situated close to the boundary with a residential property to one side and an area of open land to its rear. The floor area of the proposed garage would measure 8.95m in width and 5.9m in depth. The building would have a flat roof with a maximum height of 2.5m. The plans show a utilitarian style timber-clad building with three up and over garage doors and high-level windows on the side elevations to allow light in while maintaining privacy.
13. In this case, the proposed garage is intended to house three classic cars belonging to the appellant. At my site visit, two of the classic cars were parked at the property and one was shielded from the elements with a protective covering. Having a floor area of some 53sqm, the garage would provide space that is considered commensurate with that required for housing three cars. It is also of a size that would be subordinate in its setting. Furthermore, as I observed at the time of my visit, there is no other suitable covered space to house the appellant's collection within the curtilage of the dwelling.
14. The Council has drawn my attention to a dismissed appeal concerning an LDC for an 'incidental outbuilding'<sup>1</sup>. While there may be some similarities, the Inspector considered that the proposed outbuilding would not be required in its 'entirety' for incidental purposes and that it would be much larger than would genuinely and reasonably be required to serve its specified incidental purposes. This was partially because the proposed use of the space as a TV/cinema room would not materially differ from the use of the existing living room and as such the outbuilding would merely replicate the use of the existing accommodation within the house, extending the primary residential use into the outbuilding. In these circumstances the appeal is not directly comparable to the appeal before me with respect to uses and scale.
15. Overall, I consider that the size of the proposed garage is consistent with the envisaged use and not excessive in this instance. The use of the space as proposed would be carried out as a function of the personal enjoyment of the occupant of the dwellinghouse. In my view, the proposed use of the garage building can be regarded as being subordinate and reasonably connected with the residential use of the appellant's dwelling.
16. Given what I observed on site and the submissions provided by the appellant, I am satisfied that, on the balance of probabilities and as a matter of fact and degree, the proposal would satisfy the test of being genuinely and reasonably required for its specified purpose and would be incidental to the enjoyment of the dwellinghouse as such. Accordingly, the proposal would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO. The council may have concerns about the future use of the building, but a material change of use of the building would require planning permission and the council may take enforcement action if that eventuality occurred.

## Conclusion

17. For the reasons given above I conclude that the council's refusal to grant an LDC in respect of the concrete slab and proposed erection of timber triple bay

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<sup>1</sup> APP/P1805/X/18/3202923

single storey garage was not well-founded and that the appeal should succeed. The appeal is allowed, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

*SA Hanson*

INSPECTOR



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# 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

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**IT IS HEREBY CERTIFIED** that on 6 March 2023 the development 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 development is "permitted development" falling within Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for which planning permission is granted by Article 3(1) of that Order.

Signed

*S A Hanson*  
INSPECTOR

Date: 9 January 2024

Reference: APP/R1845/X/23/3321716

**First Schedule**

Proposed concrete slab and erection of a timber triple bay single storey garage.

**Second Schedule**

Land at: Fingerpost Cottage, Cleobury Road, Far Forest, Kidderminster DY14 9TA

## 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 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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.



## Plan

This is the plan referred to in the Lawful Development Certificate dated: 9 January 2024

by **S A Hanson BA(Hons) BTP MRTPI**

**Land at: Fingerpost Cottage, Cleobury Road, Far Forest, Kidderminster DY14 9TA**

**Reference: APP/R1845/X/23/3321716**

Scale: Not to scale

