

# Appeal Decision

**by Siobhan Watson BA(Hons), MCD, MRTPI**

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

**Decision date: 11 September 2024**

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**Appeal Ref: APP/N4720/X/24/3338088**

**17 Manor Farm Drive, Middleton, Leeds, LS10 3RE**

- 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 Richard Willis against the decision of Leeds City Council.
  - The application ref 23/05674/CLP, dated 15 September 2023, was refused by notice dated 13 November 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 a proposed outbuilding.
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## Decision

1. The appeal is dismissed.

## Application for costs

2. An application for costs has been made by Leeds City Council against Mr Richard Willis. This will be the subject of a separate decision.

## Preliminary Matter

3. The appellant states that the proposal is for a workshop and a store. I will consider the appeal on that basis.

## Appeal Site

4. The appeal property is a mid-terraced house with a long rear garden in a built-up suburban area.

## Main Issue

5. The main issue is whether or not the Council's decision to refuse the application for the LDC was well founded.

## Reasons

6. Section 192(1)(b) of the Town and Country Planning Act 1990 (as amended) (the Act) provides for the making of an application to ascertain whether any operations proposed to be carried out in, on, over or under land, would be lawful at the time of making that application. The onus in such applications is on the appellant to make out their case to the standard of the balance of

probabilities. The burden of proof lies with the appellant. The evidence must be clear and unambiguous. Issues of planning merit and development plan policies are not relevant to the consideration of such matters.

7. Subject to exclusions, limitations and conditions, Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order (2015) (the Order) permits, amongst other things, *the provision of buildings etc incidental to the enjoyment of a dwellinghouse*. The Council assessed the proposed development against the criteria set out at paragraph E.1 (a) to (j) and have concluded that the limitations and exclusions set out therein do not apply to the proposal. The Council has also confirmed that the appeal site does not lie on land falling within the designations set out at paragraphs E.2 (a) to (d) or E.3 of the Order.
8. The dispute is over whether the building would be for a purpose incidental to the enjoyment of the dwellinghouse. An incidental use is one which is functionally related to the primary use. In this case, the primary use of the planning unit is a dwellinghouse.
9. Both parties refer to the judgment in *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416. It establishes that the term "incidental" connotes an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. Also, in applying Class E the term "required" should be interpreted as "reasonably required" rather than the "unrestrained whim" of the occupier.
10. The critical test to be applied is firstly; whether the uses of the proposed outbuilding, in the context of the planning unit, are intended to be and would remain ancillary and subordinate to the main use of the dwellinghouse, and secondly; whether the proposed outbuilding is "reasonably required" in order to accommodate those uses. With regard to the nature and scale of the activities to be carried on, the size of a proposed building can be relevant, although not conclusive by itself.
11. I appreciate that the inspector for the previous appeal<sup>1</sup> for an LDC on the site found that he could "see nothing fatal with regard to the size of the building relative to that of the main house." Nevertheless, he was considering the size in relation to the proposed use which was that of a garage and a store. Although the proposed size of the building is the same as in the previous appeal, the current proposed use is different, i.e., it is for a workshop and a store.
12. The appellant says that the workshop would be used on an "as and when basis as a hobby." He has explained that the workshop activities will be related to joinery; that the activities will be by the occupier of the house; and that the activities will not be a business. He says that it will not be a consistent use.
13. The description of the use as being activities "related to joinery" is vague. There are, in fact, virtually no details about what activities would take place. The submitted plan, Drawing 3580 01 B, indicates that there would be some

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<sup>1</sup> APP/N4720/X/22/3312804

worktops in the workshop but these are not clearly marked on the plan and there is no indication of anything else that the building would accommodate. In addition, there are no details on what would be stored in the storage part of the building, which is completely separate to the workshop part.

14. The overall size of the building would be some 80 square metres which is considerable and much greater than the footprint of the existing dwelling. Without full details of the workshop activities and of what items the store and workshop would actually accommodate, it is unclear whether the building would be genuinely and reasonably required for storage and for a hobby related to joinery. The size of the building is relevant because the scale of the activity is an important matter. Without more details of the activities, it is not clear whether they might go beyond a purpose merely incidental to the enjoyment of the dwellinghouse. The occasional use put forward by the appellant seems at odds with such a large building, especially when only a vague description of the activities has been provided.
15. Furthermore, the workshop would have no access directly from the appeal property. The occupier of the house would have to leave the house and walk around the corner to get to the building via an entrance off an alleyway. Whilst it is not unusual for outbuildings, e.g., garages to have an access from a public area, there is no explanation why there is no door into the rear garden of the house. Incidental buildings within a curtilage of a dwelling normally have physical access directly from the host dwelling.
16. Apart from the vagueness of the claimed intended uses of the outbuilding, merely making an application for an LDC and stating the proposed use of each room does not provide a case that what is proposed is, or would be, reasonably required. On the evidence, I am not satisfied that an outbuilding of this size, scale and configuration is genuinely and reasonably required for the intended uses.
17. I find that ambiguous and unclear evidence has been submitted to substantiate the claim that an outbuilding of this size and design is genuinely and reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

### **Conclusion**

18. I find that the evidence does not clearly and precisely substantiate, on the balance of probabilities, that the basic Class E(a) principle would be met.
19. I conclude that the refusal to grant an LDC was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in s195(3) of the 1990 Act as amended.

*Siobhan Watson*

INSPECTOR