



Appeal Decision

Hearing held on 17 December 2024

Site visit made on 17 December 2024

by Chris Preston BA (Hons) Town and Country Planning, Bachelor of Planning (BPI), MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 January 2025

Appeal Ref: APP/G3110/X/24/3339113
105 Lonsdale Road, OXFORD, OX2 7ET

- 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 K. Michlewski against the decision of Oxford City Council.
 - The application ref 23/02703/CPU, dated 22 November 2023, was refused by notice dated 23 January 2024.
 - 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 in the application form as: The erection of a new single storey outbuilding in the rear garden of the existing property. The addition of a new paved path from the house to the proposed outbuilding and a sunken paved patio on the south west garden side of the outbuilding.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. The appeal relates to an application for a certificate of lawful development, made under s192(1)(b) of the Town and Country Planning Act 1990 (CLOPUD). The proposed development was described on the application form in the manner set out in the banner heading above. For reasons that are not entirely clear, the Council altered the description of proposed development in its decision notice which refers to “the proposed demolition of an existing boathouse and the erection of a single storey rear outbuilding and alterations to landscaping”.
3. As discussed at the Hearing, there is no suggestion that the demolition of the existing boathouse would amount to development requiring planning permission and it is clear that the proposed path to the outbuilding and the sunken patio formed part of the proposed development. Accordingly, I have considered the appeal on the basis of the description put forward within the application form. The inclusion of those elements does not effect the matters in dispute such that no prejudice to any party will arise as a result of me considering the appeal on that basis.

Reasons

4. As with any appeal relating to a CLOPUD, the planning merits of the proposal are not relevant to my decision. The main issue is whether the Council's decision to refuse the application was well-founded based on relevant facts and judicial

authority. The onus rests with an appellant to make their case, on the balance of probability. I should stress that my decision makes no comment on the planning merits of the proposed development and has no bearing on any decision should a planning application be submitted to the Council.

5. To be more specific, the main issue in dispute is whether the proposal would amount to permitted development under the terms of Class E, Part 1, of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).
6. Class E of Part 1 relates to “buildings etc incidental to the enjoyment of the dwellinghouse”. The following is permitted development, subject to the limitations set out in paragraphs E.1 to E.3:

The provision within the curtilage of the dwellinghouse of—

(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure; or

(b) a container used for domestic heating purposes for the storage of oil or liquid petroleum gas.

7. The key dispute between the Council and the appellant relates to whether the building would be required for a purpose incidental to the enjoyment of the dwellinghouse. That is a prerequisite. If an outbuilding is not required for a purpose incidental to the enjoyment of the dwellinghouse it falls outside the scope of Class E and cannot benefit from planning permission granted through the GPDO.
8. In addition, although not a matter of dispute between the Council and the appellant, interested parties have queried whether the building would comply with the limitations of paragraph E.1(d) and (h), in terms of whether it would, as a matter of fact, be a single storey building and whether it would contain a verandah or raised platform. I shall address those points after considering the principal issue of whether the outbuilding would be required for an incidental purpose.
9. I have been referred to relevant caselaw which has established a number of principles that should be applied. In *Emin*¹, it was held that whether a building is “required” for a purpose incidental to the enjoyment of a dwellinghouse could not rest on the unrestrained whim of those residing in a dwelling but that the GPDO connotated a sense of reasonableness in the circumstances of any particular case.
10. Moreover, it was held that the term incidental implied a degree of subordination in land use terms in relation to the enjoyment of the main dwelling itself. In that context the scale of any activities and the physical size of any buildings are relevant factors in assessing whether a proposal would be incidental in nature. However, whilst size is a relevant consideration, including the scale in relation to the scale of the dwellinghouse, it is not necessarily conclusive of itself. Thus, consideration needs to be given to both scale and function.

¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

11. As held in *Pecche D'Or Investments*², where an outbuilding would contain uses that would normally form part of the primary function of a dwellinghouse, such as bedrooms or primary living space it will essentially amount to an extension of the main or ordinary living accommodation of the dwelling as opposed to being an incidental use. However, it was also held that there is no warrant in legislation for excluding a particular type of room or building as a matter of law. It is therefore necessary to examine the facts on a case specific basis to determine if the uses proposed can be considered to be incidental in nature.
12. With that in mind, it would be wrong to exclude in principle any of the proposed uses that would make up the proposed building, which is shown on the plans to contain a summer room, games & boats room, gym, two home offices, a storage shed and a shower/ WC. Individually, the home offices, gym and shed are not excessive in scale taking into account the equipment that would be housed within them. The shed is also modest, given the scale of the garden attached to the dwelling.
13. The proposed summer room is, by any measure, a large space which would house kitchen units, an island bar, large dining table (shown to accommodate 8) and a separate seating area with sofas depicted on the plans. I have reservations as to whether the scale of that space could be considered reasonably required if the function were simply a summer room, which would normally be a space within a sunny spot in the garden to sit and relax away from the main house. I shall address the function of the room below but the scale of the space does seem excessive if a summer room is the intended purpose.
14. The games and boats room would be of a similar size, shown to contain a pool table, table tennis table and space to store kayaks and paddle boards. Reference has also been made to utilising the space for an indoor climbing wall or boulder. Whilst the floor to ceiling height would be substantial, taking advantage of the sloping terrain, that is not to a point of being unreasonable, given the intended function of the room. Clearly, sufficient space would be needed to accommodate the pool and table tennis tables and proposed climbing wall, all of which would be typical incidental uses. The Council and interested parties appear to have formed a view on what would be the minimum requirement to carry out any specific activity and concluded that anything beyond that is unreasonable in scale. I think that is an overly restrictive approach. There is nothing inherently unreasonable in seeking a light and airy space to take advantage of views of the river whilst undertaking leisure activities associated with the enjoyment of the dwellinghouse.
15. However, the combined scale of all of the various uses combined would be substantial and the overall footprint greater than that of the dwellinghouse itself. That does lead me to question whether the proposed building and its use would be subordinate in nature. However, footprint is only one measure. The floorspace of the dwelling is spread out across three floors and would be greater than that of the outbuilding. The dwelling is not insubstantial and is set within a generous garden. Thus, size, of itself, is not determinative in my view.
16. However, when the scale of the accommodation is considered in the context of how it is proposed to be utilised, it belies the fact that the use would not be of an incidental nature. Although described as a summer room, the statements

² *Pecche D'Or Investments v SSE*[1996] JPL 311

submitted by the appellants highlight that the main space on the upper section of the building is designed to cater for numerous guests and visitors for purposes including hosting summer parties, organising occasional company workshops and enjoying the sun in the summer with a larger group of people. The frequency of such events is not set out but the appellants are said to have a large circle of friends and the space is clearly not intended for occasional use, given the likely expense involved in construction and fitting out.

17. It is stated that the main house has a north-facing garden which makes the living room darker and unable to provide the same level of pleasure as “a pleasantly exposed summer garden room”. The statement also refers to dimensional limitations in the existing living space which makes catering for larger groups difficult.
18. The rationale is much the same as any householder contemplating an extension to the main property; the existing living space does not appear to meet the appellant’s expectations in terms of orientation, size and configuration so additional living accommodation is proposed in the garden to meet their needs. The room would be orientated to face back towards the house, as opposed to down onto the river, such that it would have an intimate association with the rear living space. It would contain kitchen units, a breakfast bar/ island, large dining table and sofas/ seating areas, all features normally found in primary living space.
19. As noted above, it would be larger than would be reasonably required for what could normally be referred to as a summer room and the way in which it would be used is clearly more of an extension of the primary living accommodation in the dwelling. Whilst it is not unreasonable for a home owner to wish to hold parties for friends or create a sociable space to entertain, the proposed use would not be incidental to the enjoyment of the dwellinghouse but a fundamental part of how the appellants would occupy the dwelling.
20. The statement of Mr Michlewski strengthens my view that the building as a whole would operate as an extension to the primary living space of the dwelling. He describes being a business owner working across multiple time zones, routinely working 12-16 hour shifts, often at weekends and at night, which understandably makes working within the main house more difficult, especially if running meetings, presenting etc.
21. He fits that working pattern alongside an intense exercise regime in the morning, such that the gym needs to be co-located alongside the office and mini-kitchen/ space to eat and drink and shower. Such facilities are available in his present home (the appellants had not moved into the appeal property at the time the statement was written) and he seeks to replicate or enhance them in the proposed building. He often does not have time to go back into the main dwelling on account of work and other commitments.
22. It is clear from that statement that Mr Michlewski would routinely spend more time in the outbuilding than he would in the main dwelling. In his own words, the outbuilding “is not just a whim but a necessity dictated by the essence of our lifestyle and professional commitments”. The garden office is said to be essential for his productivity to an extent where trips back to the dwelling are difficult due to limited time constraints in a busy schedule. The ordinary definition of the words necessary and essential is the opposite of incidental and it is quite clear that the

space would be integral to the day to day living arrangement of the property as a whole. Whilst home offices or studies can be incidental in nature depending upon how they are used on the facts of the case it would operate as an extension to the primary living accommodation and not as an incidental addition.

23. The information provided also refers to use associated with the business activity of the appellant. The garden room would be used for occasional company workshops and reference is also made to colleagues visiting Mr Michlewski at work. The latter was with reference to his existing property but he then states that the proposed building would need to replicate existing functionality. It is not clear how often such visits or workshops would take place. It is not uncommon for people to work from home and run businesses from home without involving a material change of use of a dwellinghouse. However, even where no material change of use would occur, whether the intended business related activities could be said to be incidental to the enjoyment of the dwellinghouse is not clear from the information given.
24. Looking at the evidence as a whole, the proposed building would not be required for a purpose incidental to the enjoyment of the dwellinghouse but would function as an extension to the primary living space. Whilst certain components are the types of uses that could be considered incidental, such as the games room and shed, others, including the summer room and office space would effectively comprise an extension to the main living space. Evidence of how the building would be used as a whole depicts a space that would be fundamental, as opposed to incidental, to the way in which the dwellinghouse would be utilised on a day to day basis.
25. My conclusion in that respect makes no judgement on whether it is reasonable for a home owner to seek to reside in the manner proposed but is based on the limitations of Class E which is restricted to purposes incidental to the enjoyment of the dwellinghouse. It is open to the appellants to apply for planning permission for the proposal at which point the planning merits could be considered.
26. Accordingly, on the balance of probability, the evidence presented indicates that the proposed use falls outside the scope of development permitted by Class E, Part 1, of Schedule 2 of the GPDO.
27. Whilst it is somewhat academic given that conclusion, I also have reservations as to whether the proposed building could be described as “single storey”. The plans depict what may commonly be referred to as a split-level building with an upper floor and lower floor which is accessed by a flight of stairs. Finished floor levels are not shown on the proposed drawings but there are shown to be 9 risers in the staircase and the sections show a notable fall in level between the upper section and lower section.
28. The two levels sit side by side, such that one is not directly above the other as would be the case in a normal two-storey structure. However, the dictionary definition of single-storey is “a building having only one floor or level”³. That needn’t necessarily be stacked vertically. The proposed building would undoubtedly have more than one level.

³ Collins online dictionary

29. There is no dispute that the height of the building, measured from the highest adjacent ground level is no greater than 4m, such that it complies with paragraph E.1(e) of Class E. However, the fall in the garden is such that the height of the façade at the lower level, from floor level to ridge height would be in the region of 7m. It is not abundantly clear why established guidance requires buildings on sloping sites to be measured from the highest adjacent ground level, as opposed to the adjacent land opposite the highest point of the building. On severely sloping sites that could result in significant height differential across the building, as is the case here. It may be that the requirement for buildings to be of single storey construction is intended to limit that scenario. In other words, without splitting the levels and adding a staircase to go from one to the other the usability of the lower space would be limited. That re-affirms my view that the building in question does have more than a single storey; it is designed in such a manner on account of the slope, with a distinct upper and lower level. Accordingly, had the building been of an incidental nature, it would not have complied with the limitation of paragraph E.1(d).
30. Looking at the plans, the proposal would not contain a verandah, as suggested by interested parties. The glazed doors/windows at the lower level would be set back behind the façade by some margin but that recess is a design feature and not of sufficient depth to have any practical function other than as a cill between the glazing and outer edge of the structure. Accordingly, it would not contravene paragraph E.1(h).
31. I have been referred to numerous other appeal decisions relating to outbuildings by various parties in support of their respective positions. However, as found in the *Pêche D'Or Investments* judgment, whether a particular use, such as a study or office will or will not amount to an incidental use will require a fact sensitive judgment in any given case. My decision in this case rests not only on the mix and scale of proposed uses but on the specific detail which identifies how those spaces would be used. That is specific to the case in question and I am not satisfied that those circumstances are directly comparable to any of the examples presented in terms of the proposed mix of uses and how they would be used. Accordingly, reference to other appeal decisions does not lead me to alter my conclusion in the current appeal.

Conclusion

32. For the reasons given above I conclude that the Council's decision to refuse to grant a certificate of lawful use or development in respect of the proposed development was well founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

Chris Preston

INSPECTOR

APPEARANCES

FOR THE APPELLANT:

Mr Hugh Mellor	Agent, Carter Jonas
Mr Adrian James	Adrian James Architects

FOR THE LOCAL PLANNING AUTHORITY:

Mr Charles Retson	Senior Planner
Mr Robert Fowler	DC Team Leader
Mr Ross Chambers	Solicitor

INTERESTED PARTIES

Mr Chris Bright	Neighbour
Mrs Sue Bright	Neighbour
Mr Peter Hirsch	Neighbour

DOCUMENTS SUBMITTED TO THE HEARING

- 1) Written copy of statement from the appellants explaining their non-attendance, as read out by Mr Mellor on their behalf.