



Appeal Decision

Site visit made on 25 February 2025

by **Stephen Hawkins MA, MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5 March 2025

Appeal Ref: APP/Y3615/X/22/3311601

Binton Farmhouse, Binton Lane, The Sands, Farnham, Surrey GU10 1LQ

- 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 & Mrs Jan de Walden against the decision of Guildford Borough Council.
 - The application ref 22/P/01271, dated 19 July 2022, was refused by notice dated 24 August 2022.
 - 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 'Garage & store. Outbuilding as per Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015.'
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed operations which are considered to be lawful.

Preliminary Matters

2. The description in the banner heading of the development for which an LDC is sought is taken from the application form. For the Certificate however I have adopted a more abbreviated description similar to that used by the Council on their decision notice.
3. Since whether an LDC should be issued is strictly a matter of fact and law, planning merits considerations can have no bearing on the outcome of this appeal.

Main Issue

4. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

5. The burden is firmly on the appellant to show why an LDC should be issued, the relevant test of the evidence being on the balance of probability. The relevant date for determining whether the proposal would be lawful is the date of the application.
6. The appeal property contains a two-storey, detached five-bedroomed dwelling. There is a lengthy single storey wing, which projects to the rear of the dwelling. Planning permission was granted at appeal in January 2022 to convert and extend the rear wing to provide primary living accommodation including a kitchen, living room and bedrooms¹.

¹ Appeal Ref: APP/Y3615/D/21/3280383

7. It is proposed to erect a freestanding outbuilding in the grounds opposite the rear wing. The outbuilding, which would have a hipped roof, would provide a garage for two vehicles along with covered storage for garden equipment including a tractor/mower and trailer, a lawnmower, various hand-held items of equipment and tools along with garden furniture.
8. The GPDO at Article 3, Schedule 2, Part 1, grants planning permission in Class E paragraph E.(a) for the provision within the curtilage of a dwelling of any building or enclosure, swimming or other pool, where it is required for a purpose incidental to the enjoyment of the dwelling as such.
9. In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it. The Government's Technical Guidance advises that a large range of buildings can fall within Class E, including garden sheds, other storage buildings and garages, as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling².
10. Established case law makes it clear that in terms of Class E, 'required' for an incidental purpose should be interpreted as 'reasonably required' and does not rest on the unrestrained whim of a householder. The physical size of an outbuilding, alone or in relation to a dwelling, is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose³.
11. The activities for which the outbuilding would be put to use, set out above, could all reasonably be regarded as being subordinate to and connected with the running of the dwelling and as such, incidental to its enjoyment. It is not unreasonable for the appellants to seek to replace facilities that would be displaced from the rear wing following its conversion to living accommodation. Nor is it unreasonable for a dwelling of this size to provide garaging for two vehicles. The Council accepted that with a footprint of around 43m², the 'garage' part of the outbuilding would not be of excessive size having regard to its intended purpose. I concur.
12. The 'storage' part of the outbuilding would have a footprint of around 22m². The dwelling occupies spacious grounds which contain areas of lawn and maturing planting as well as a number of substantial trees. A range of machinery and equipment is therefore likely to be required to effectively manage and maintain the grounds. Also, given the substantial size of the property, there is likely to be an accumulation of various garden furniture items. It is not unreasonable to require a weathertight and secure facility to accommodate valuable items of machinery, equipment and furniture, at times when those items are not in use. With a footprint similar to that of a single garage, the storage part of the outbuilding would not be unusually large when the likely size of some of the machinery, equipment and other items to be accommodated is taken into account.
13. Set in the above context, the part of the outbuilding to be used for storage would not, in my view, be of excessive size having regard to its intended purpose. In practice, it is unlikely that this part of the outbuilding could be made significantly smaller without compromising its intended use, either through being less capable of accommodating the items intended or being relatively inconvenient to use-for example having to move machinery and equipment around to access items. Although as far as I was made aware there were no proposals to install domestic heat pumps at the property, any associated plant is unlikely to occupy much floorspace in any event.

² Permitted development rights for householders: Technical Guidance MHCLG 2019

³ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

14. The Council drew attention to an LDC issued in October 2021, in respect of the use of the rear wing for incidental purposes. This included a portion of floorspace in the rear wing to be used for storage, similar in size to the storage part of the outbuilding, along with a smaller storage area in the dwelling⁴. Nevertheless, the issuing of that LDC pre-dates the granting of permission to convert and extend the entirety of the rear wing to provide living accommodation. Moreover, compared to the proposal the storage areas in the 2021 scheme are not conveniently related to the majority of the grounds. Also, the storage areas in that scheme lack substantial elevational openings and so would be difficult to access, particularly with larger items of machinery, equipment and furniture. Consequently, in my view the 2021 scheme does not represent a practical alternative to providing the storage part of the outbuilding.
15. At around 65m², the outbuilding would have a total footprint around a fifth of that of the dwelling, the latter being around 370m² when the rear wing is taken into account. Accordingly, the outbuilding would be considerably smaller than the dwelling. This is another factor which, whilst not in itself determinative, nevertheless indicates that the outbuilding would not be of an excessive size in relation to its stated purposes.
16. Drawing the above matters together, based on the available evidence, as a matter of fact and degree and in the circumstances of this particular case, I find that the proposal would be genuinely and reasonably required for purposes incidental to the enjoyment of the dwelling, it would not be of a size that is excessive for its purpose and paragraph E.(a) is therefore satisfied.
17. The planning permission granted by Class E is also subject to the size, height and locational limitations in paragraphs E.1 to E.3 being satisfied. It is not in dispute that the outbuilding would satisfy the limitations in those paragraphs. There is no sound reason why I should find any differently.
18. Accordingly, the appellant has been able to show that, on the balance of probability, the proposal is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class E and is lawful for planning purposes.

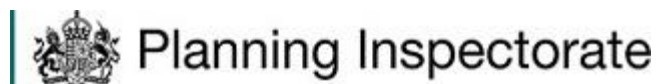
Conclusion

19. 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 for the proposal was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Stephen Hawkins

INSPECTOR

⁴ Council Ref: 21/P/01528



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 July 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

On the available evidence and on the balance of probability, planning permission is granted for the proposal (as shown on drawing nos 2008(EX)05 Rev P1, 2008(PL)506 Rev P2 & 2008(PL)535 Rev P2) by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Stephen Hawkins

Inspector

Date: **5 March 2025**

Reference: APP/Y3615/X/22/3311601

First Schedule

Proposed outbuilding comprising a garage and store

Second Schedule

Binton Farmhouse, Binton Lane, The Sands, Farnham, Surrey GU10 1LQ

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 use /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, was /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 /operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use /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.

Scale: Not to Scale

