



Appeal Decision

Site visit made on 11 March 2025

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

an Inspector appointed by the Secretary of State

Decision date: 18 March 2025

Appeal Ref: APP/J0540/X/23/3320806

63 Lincoln Road, Northborough, PETERBOROUGH, PE6 9BH

- 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 G HARRIS against the decision of Peterborough City Council.
 - The application ref 22/01241/CLP, dated 7 September 2022, was refused by notice dated 2 November 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 the erection of an outbuilding/shed.
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Decision

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

Reasons

2. As with any application or appeal relating to a Certificate of Lawfulness for Proposed Development (CLOPUD), the planning merits of the proposal are not relevant to my decision. The main issue is whether the proposed building would have been lawful at the time the application was made and whether the Council's decision to refuse to grant a certificate was well-founded based on relevant facts and any relevant judicial authority. The onus rests with an appellant to make their case, on the balance of probability.
3. 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).
4. 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.

5. The Council accepts that the building would conform to the size and locational limitations of paragraphs E.1 to E.3. The key dispute is whether the building would be required for a purpose incidental to the enjoyment of the dwellinghouse on account of its scale; in effect the Council's position is that it is too large, in proportion to the scale of the existing dwellinghouse, to amount to an incidental structure. 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.
6. It is also a pre-requisite that any building must be within the curtilage of the dwellinghouse to benefit from permitted development rights under Class E. In that respect, the appeal property is slightly unusual in that it has a very large area of land associated with it to the rear, including the garden and a number of paddocks which extent beyond the garden. Precisely where the residential curtilage is can be difficult to assess in such situations because there is interplay between the domestic activity of the house and the equine related uses that take place in the paddocks.
7. The appellant contends that the extent of the domestic curtilage is defined by the line of a conifer hedge which runs along the back edge of the manege. On the ground that does seem to mark a transition between a more domestic pattern of use, with planting, fruit trees and domestic outbuildings to the rear of the dwelling and the equine related uses beyond the hedge. One of those buildings is a stable but paragraph E.4 of Class E identifies that purposes incidental to the enjoyment of the dwellinghouse includes the "keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse". The horses and stabling would appear to fall into that category.
8. The Council has not suggested that the proposed building would fall outside the domestic curtilage and I agree with the assessment of the appellant that the conifer hedge marks the effective boundary of the domestic garden that is closely associated with the dwelling.
9. I have been referred to well-established caselaw which sets out 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.
11. One of the buildings proposed in *Emin* was a structure to house indoor archery, billiards and pottery. The nature of those activities were incidental to the enjoyment of the dwellinghouse and the size of the structure was not held to be unreasonable. Whilst the proposed building was large that was dictated by the function of the

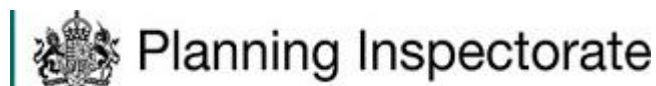
¹ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

activity that would take place. It would not be possible to undertake indoor archery in a small space. Similarly, for example, a building housing a swimming pool would be required to have sufficient size to enable the activity to take place. Thus, proportionality to the size of the existing dwelling is not the only consideration.

12. In this case, the floor plan shows that the building would be used for multiple activities including the storage and repair of vintage tractors, which is a hobby of the appellant, storage of hay and straw related to the stable and room for parking a horse box and a trailer associated with the vintage tractors, along with space to store machinery and equipment related to the upkeep of the property.
13. Those activities already take place on the land and can be considered incidental to the enjoyment of the dwellinghouse. The purpose of the building is essentially to provide cover, security and space to carry out maintenance. The hay and straw is stored under a lean-to at the back of the stable that would be demolished to make way for the new building. The vintage tractors are either stored in the open, with one on site at the time of my visit, or in the garage which is limited in size for the activity. By the nature of the activity, tractors are bulky vehicles and space would be needed around them to carry out repairs and restorations. It also seems perfectly reasonable to wish to store the horsebox and equipment indoors for security purposes and those elements are related to existing activities associated with the reasonable enjoyment of the dwellinghouse.
14. The Council contend that the scale is excessive in relation to the keeping of two horses. However, when one examines the proposed floorplan and the mix of activities described above none of it appears lavish or unduly excessive in my view. It is not put forward on the “unrestrained whim” of the appellant but on a reasonable analysis of the needs arising from the existing hobbies and domestic activities. The appellant’s interest in vintage tractors is not solely related to the keeping of horses but is an interest of itself.
15. Moreover, the building would not appear overly large in relation to the scale of the curtilage which is substantial, with a detached dwelling in sizeable grounds. The scale and type of activities proposed is not unusual for a rural property of the type in question. Taking all of the above into consideration, I am satisfied that the building is required for purposes incidental to the enjoyment of the dwellinghouse and its scale would not be unreasonable when the nature and type of those activities are examined. It is also within the tolerances set out in paragraphs E.1 to E.3 of Class E.
16. Therefore, on the balance of probability, the evidence presented indicates that the proposed building falls within the scope of development permitted by Class E, Part 1, of Schedule 2 of the GPDO. It would therefore benefit from planning permission granted by virtue of Article 3(1) of the GPDO and would have been lawful on the date the application was made. Accordingly, the Council’s refusal to grant a CLOPUD was not well-founded and the appeal shall succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the Act (as amended).

Chris Preston

INSPECTOR



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 7 September 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:

The evidence presented indicates that the proposed building is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse at 63 Lincoln Road, Northborough and thereby falls within the scope of development permitted by Class E, Part 1, of Schedule 2 of the GPDO. It would therefore benefit from planning permission granted by virtue of Article 3(1) of the GPDO.

Signed

Chris Preston

Inspector

Date: 18 March 2025

Reference: APP/J0540/X/23/3320806

First Schedule

Erection of an outbuilding/ shed

Second Schedule

Land at 63 Lincoln Road, PETERBOROUGH, PE6 9BH

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 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, 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 18 March 2025

by Chris Preston

Land at: 63 Lincoln Road, PETERBOROUGH, PE6 9BH

Reference: APP/J0540/X/23/3320806

Scale: Not to Scale

