

Appeal Decision

Site visit made on 10 June 2025

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 16th June 2025

APP/C3430/X/24/3345528

The Old Chapel, Chapel Lane, Smestow, Dudley DY3 4PL

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended, (the Act), by the Planning and Compensation Act 1991 against a refusal by South Staffordshire District Council to grant a certificate of lawful use or development.
- The appeal was made by Mr J Cowles.
- The application, reference 24/00044/LUP, was made on 15 January 2024 under s.192(1)(a) of the Act. It was refused by a notice dated 14 March 2024.
- The Application for a Certificate of Lawful Development was for: Erection of a single-storey outbuilding to provide a home study and games room at The Old Chapel, Chapel Lane, Smestow, Dudley DY3 4PL.

Summary of decision: The appeal is dismissed.

Appeal property and application

1. The appeal property, The Old Chapel, is a detached house fronting on to the northern side of the narrow access road, Chapel Lane, Smestow. The house has a parking area to the western side of the house with lawns further west and to the rear of the house. The Old Chapel house is small, with a lounge/dining room, kitchen and w.c. on the ground floor, 2 bedrooms and a bathroom on the first floor. Application plan 4361-103G shows the dwelling to have a ground footprint area of 62.7m².
2. The Appellant, Mr J Cowles, wishes to construct an outbuilding just west of The Old Chapel house. The single storey ancillary building would be set back from the existing dwelling by almost 6m, 1.3m from the house. It would have a frontage about 10.4m wide by 5.7m deep with a footprint ground area of 59.3m². It would accommodate a 14.6m² floor area study and a 29m² floor area games room. The w.c. and storage cupboard floor areas would be 5.3m².

Permitted development

3. Article 3, Schedule 2, Part 1, Class E *buildings etc incidental to the enjoyment of a dwellinghouse* to The Town and Country Planning (General Permitted Development), (England) Order 2015), (the Order), permits, (subject to limitations), 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
4. The High Court case of *Emin v SSE & Mid Sussex DC [1989] JPL 909 58 P. & C.R. 416* determined that an outbuilding must be 'required for some incidental purpose' to be development permitted under Class E to the Order. The size of the building, including in comparison to the host dwelling, may be an important consideration, but size alone is not conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is

genuinely and reasonably required to accommodate the use and thus achieve that purpose.

5. Sir Graham Eyre QC in *Emin* said: 'The fact that such a building had to be required for a purpose associated with the enjoyment of a dwellinghouse could not rest solely on the unrestrained whim of him who dwelt there but connoted some sense of reasonableness in all the circumstances of the particular case ...'.

Local Planning Authority

6. The Council said the existing dwelling was of modest size. However, each space in the proposed outbuilding allocated to the main uses appeared overly generous. The home study would be almost 15m², larger than might be expected for a domestic facility. The 29m² games room would be a large space, previous amendments having shown a snooker/pool table, dining table and lounge space in the games room. As some of those could be deemed primary living accommodation, the icons symbolising the lounge and dining space were removed from the current amended plans. Some email information was provided stating that the games room would be used for either a snooker or table tennis table and would also double up as storage for outdoor patio cushions and pads.
7. The large outbuilding would not appear subordinate to the main dwelling. The requirement for an outbuilding of the size proposed had not been justified. Mr Cowles failed to clearly demonstrate how it was reasonably required for a purpose incidental to the use of the dwellinghouse as a dwellinghouse.

Considerations

8. I share the Council's concern in questioning the use of the proposed outbuilding. Not just its scale but also whether the use would be entirely incidental to the enjoyment of the dwellinghouse. The appeal application before me is an amendment of an earlier outbuilding proposal. That had shown a larger building with what was described as having more ambitious internal facilities. Mr Cowles said the current project was intended to meet Council requirements, whilst providing facilities to meet the family's needs, given the limited space available within the main dwelling. That suggests more living space is required than is provided within the dwelling.
9. Following Sir Graham Eyre in *Emin*, (para. 4 above), where the size of the building, including in comparison to the host dwelling, may be an important consideration, the present layout is that The Old Chapel house is of a quite restricted size for occupation by even a small family and the addition of a similarly sized building would appear incongruously excessive to serve merely incidental purposes to the main house. It would appear more likely an extension, particularly as so closely built alongside The Old Chapel, with the doors to both buildings set closely together.
10. The *Emin* judgment helps to show that the relationship between the size of the proposed building and the size of the dwellinghouse itself is not, of itself, determinative. The Class E concessions neither mention such a size relationship nor does it fix a limit on the size of an outbuilding. However, the words incidental to the enjoyment of the dwellinghouse as such impart some consideration of a relationship between the house and its outbuilding. Those principles were reiterated in *LB Croydon v Gladden* [1994] 1 PLR 2 and *Holding v FSS & Thurrock BC* [2004] JPL 1405. The term 'required' is therefore interpreted for the purposes of applying Class E as meaning 'reasonably required'. Other judgments clarify that in each case it has to remain a matter of fact and degree as to whether facilities were, or were not, an integral part of the ordinary residential use of the primary unit, (*Peche D'or Investments v SSE* [1996] JPL 311) and

that the facilities could not be something for the provision of a primary dwellinghouse purpose, (*Rambridge v SSE & East Herts DC* [1996] QBD).

11. In *Emin*, as size was determined not conclusive, it was considered necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. Here, the proposed games room, apparently larger than the area within the main house dedicated for use as a lounge, seems disproportionately large and unjustified as to its need for family games use. As, in my view, does the study, again relative to the limited space in the main dwelling.
12. I consider that the proposed large outbuilding would be excessive in size in relation to the dwellinghouse. Mr Cowles failed to show how the building would be used to justify its size. It could not be considered reasonably required for a purpose incidental to the dwellinghouse. In my view, it would not be development permitted by Schedule 2, Part 1, Class E *buildings etc incidental to the enjoyment of a dwellinghouse* to the Order.

Conclusion

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development on the application made for Use of the land for the Erection of a single-storey outbuilding to provide a home study and games room at The Old Chapel, Chapel Lane, Smestow, Dudley DY3 4PL, was well founded and that the appeal should not succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

FORMAL DECISION

14. The appeal is dismissed.

John Whalley

INSPECTOR