



Appeal Decision

Site visit made on 14 July 2025

by Robin Buchanan BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date 18 July 2025

Appeal Ref: APP/C3620/X/25/3359031

3 Upper Oakdale Cottages, Weare Street, Ockley, Surrey RH5 5NN

- The appeal is made under section 195 of the Town and Country Planning Act 1990, as amended, (the Act) against a refusal to grant a certificate of lawful use or development.
- The appeal is made by Mrs Kaye Weeden against the decision of Mole Valley District Council.
- The application ref MO/2024/1818, dated 29 October 2024, was refused by notice dated 19 December 2024.
- The application was made under section 192(1)(b) of the Act.
- The development for which a certificate of lawful use or development is sought is 'erection of an outbuilding'.

Summary Decision: The appeal is allowed in the terms set out below in the Formal Decision.

Main Issue

1. The main issue is whether the Council's decision to refuse the application for a lawful development certificate was well-founded.

Reasons

2. The application was made to ascertain whether the proposed outbuilding would have been lawful if begun on the date of the application. For the appeal to succeed, the onus and burden of proof is firmly on the appellant to demonstrate, on the balance of probabilities, that it was lawful. In this case, that it was granted planning permission by Article 3(1) and Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015, as amended (the GPDO).
3. Buildings erected under Class E should be built for 'a purpose incidental to the enjoyment of the dwellinghouse as such' by its occupants. This phrase is not defined for planning purposes and is largely a judgement informed by matters of fact and degree. The nub of the dispute is whether the outbuilding would have been used by the occupants of No.3 Upper Oakdale Cottages for a purpose incidental to the enjoyment of this house as such.
4. There is undisputed evidence that Mr Weeden has had a career in the motorsport industry alongside a lifetime passion for keeping and restoring a personal collection of classic or vintage cars and motorbikes. These have been acquired over the years for the sake and enjoyment of preserving automotive history. Also, that he and the appellant, Mrs Weeden, moved to No.3 Upper Oakdale Cottages in 2024, heading towards retirement and giving up a similar outbuilding (to that which is proposed) where they used to live. His vehicles have since been temporarily distributed amongst friends and family or in paid for storage facilities elsewhere, initially pending the outcome of the application to the Council and now this appeal.

5. While not proof of ownership, the photographed front covers of the appellant's DVLA V5C registration certificates show Mr Weeden as the registered keeper of the 8 vehicles concerned. His address is shown as No.3 Upper Oakdale Cottages and it is evident from dates on the front covers that the vehicles are relatively old or were acquired by him many years ago.
6. I have had due regard to relevant caselaw the Council referred to in respect of what may constitute an incidental use. There is no suggestion that a business would be established in the proposed outbuilding and the Council accepts that a domestic garage can be used for a purpose incidental to the enjoyment of a house. This is also set out in guidance I have been referred to¹.
7. But, in essence, the Council considers that the size of the proposed outbuilding (in terms of its intrinsic footprint and relative to the footprint and floor area of the house) renders it beyond a purpose incidental to the enjoyment of a house. This is even if the house was enlarged by approved side and rear extensions and, as I saw at my site visit, such works are under construction.
8. The Council also referred to a dictionary definition of incidental as 'happening as a minor accompaniment to something else'. This definition does not prescribe a test of physical size by footprint or floor area. Nor does it mean in this case, as the Council also contends, that the proposed outbuilding should not be larger than the house by either measure. There is little evidence that Class E explicitly includes this particular size (footprint or floorspace) limitation or condition, other than as relevant to ground area within a curtilage.
9. Nor does Class E limit or condition design practicality or usability, including distance from a driveway or if vehicles could transit between it and an entrance from a road, across part of a garden and the frequency of such activity. These are largely matters of planning merit so are not relevant to an application for a lawful development certificate or, therefore, my decision.
10. That is not, though, to say size per se is not relevant to whether something would be for a purpose incidental to the enjoyment of a house. The appellant suggests it matters not whether the number of cars is 1 or 20 – thus how large the outbuilding would need to be in this sense – because quantity or a specific use of a building is not an explicit limitation or restriction of Class E. However, quantum (as well as size) is an implicit facet of whether something, including a use, would be for a purpose incidental to the enjoyment of a house. There comes a point where the nature or extent of use and activity intended for a proposed building falls beyond what can reasonably be understood as for a purpose incidental to the enjoyment of a house, thus outside of Class E. This is no matter how keen or desirable anyone believes the use or activity to be or how insistent a need for a building is expressed.
11. In this case there is evidence that the proposed outbuilding would be sufficiently large enough to conveniently store and maintain Mr Weeden's classic or vintage vehicles, even if all cars, including storage for tools and equipment and space to safely work on them. There is little to suggest that 8 vehicles is common. But an underlying requirement of a householder to store his own classic or vintage cars and work on them can be a normal domestic activity. In this case, the evidence corroborates that it would not be excessive or unusual given Mr Weeden's background. There is not much to counter that the primary use of the residential

¹ Permitted development rights for householders – Technical Guidance, September 2019

plot that is No.3 Upper Oakdale Cottages would still be a house and garden such that the proposed outbuilding (and the intended purpose and use of it) would not fragment or usurp this established planning unit or materially change its character.

12. There is, as a result, little evidence to suggest other than that though large in footprint, the proposed outbuilding would be fit for its intended purpose to facilitate a leisure or hobby activity. It would play an important role in Mr Weeden's life, and likely for this reason so too the appellant, as a functional part and parcel of their day-to-day enjoyment of living at No.3 Upper Oakdale Cottages.
13. Taking account of the above, as a matter of fact and degree, the appellant has demonstrated, on the balance of probabilities, that the proposed outbuilding would have been used for a purpose incidental to the enjoyment of the house. In these circumstances, the Council otherwise agrees that it would have been granted planning permission by Article 3(1) and Schedule 2, Part 1, Class E of the GPDO. Consequently, on this basis it would have been lawful if begun on the date of the application.

Conclusion

14. For the reasons given above, and on the evidence now available, I am satisfied that the Council's decision to refuse to grant a lawful development certificate for the erection of an outbuilding was not well-founded. Accordingly, the appeal succeeds and I will exercise the powers transferred to me under section 195(2)(a) of the Act.

Formal Decision

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

Robin Buchanan
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 29 October 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed erection of an outbuilding was permitted development pursuant to Article 3(1) and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Robin Buchanan
Inspector

Date 18 July 2025

Reference: APP/C3620/X/25/3359031

First Schedule

The proposed erection of an outbuilding as shown in the proposed site plan (drawing number A24007 A(S3)24), proposed floor plans (drawing number A24007 A(S3)25) and proposed elevations plan (drawing number A24007 A(S3)26).

Second Schedule

3 Upper Oakdale Cottages, Weare Street, Ockley, Surrey RH5 5NN

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.



Plan

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

by Robin Buchanan BA (Hons) MRTPI

Land at: 3 Upper Oakdale Cottages, Weare Street, Ockley, Surrey RH5 5NN

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Scale: Not to Scale

