



Appeal Decision

by A U Ghafoor BSc (Hons) MA MRTPI FCI fCMgr

an Inspector appointed by the Secretary of State

Decision date: 25th September 2025

Appeal Ref: APP/B1550/X/22/3310296

5 The Grange, New Build at Murrels Lane, Hullbridge SS5 6AB

- 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 (LDC).
 - The appeal is made by Mr Brian Mitchell against the decision of the Rochford District Council.
 - The application Ref 22/00756/LDC, dated 4 August 2022, was refused by decision dated 11 October 2022.
 - The application was made under section 192(1)(b) of the Act.
 - The proposed development for which a certificate of lawful use or development is sought is to demolish existing garage and construct new building comprising garage and games room.¹
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Decision

1. The appeal is dismissed.

Reasons

2. For background information, the planning history, insofar relevant, includes several LDC applications and enforcement notice relating to the erection of a two-storey building (appeal ref 3295018 dismissed 28 July 2023). The notice requires the demolition of that structure, and I understand it remains in force. However, the appellant states that this appeal aims to achieve an alternative solution to the wholesale demolition of the unauthorised building and its aim is to ascertain the principle of lawful development in this location. I will proceed on this basis.
3. The appeal needs to be considered in the context of the terms of development permitted by article 3, schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 as amended. It is evident from the reason for refusing the LDC and the associated bundle that the building in question would meet all the limitations and conditions set out in paragraph E.1 of Class E. I have no reason to question this. The Council's decision to refuse the application is founded on the claim that the building is not required for a purpose incidental to the enjoyment of the dwellinghouse as such, which is the wording contained within sub-paragraph (a) of Class E. The appellant disputes this arguing that the outbuilding would satisfy this test being genuinely required for purposes incidental to the enjoyment of the dwellinghouse.
4. Case law provides authority for how "incidental" should be interpreted. These authorities indicate that things like garage and games rooms are capable of being a type of use that is incidental to the enjoyment of a dwellinghouse. In the leading case of *Emin*² it was held that it was wrong to conclude that an outbuilding could not be said to be required for a use

¹ The The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits are not relevant at any stage in this process nor are actual or perceived issues relating to the handling of the LDC application. I do not consider a site visit is necessary to determine the appeal and proceed on this basis.

² *Emin*² v SSE [1989] JPL 909.

reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwelling provided for primary activities. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier³. On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the enjoyment of the dwelling. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the circumstances⁴. I should also say that while there is a need for consistency in decision-making, each case must be considered on its individual merits.

5. The appeal parties talk extensively about size and comparison with original or extended dwelling. To my mind, the discussion reveals a deep misunderstanding of the correct approach. Firstly, there is no absolute limit in percentage terms as to how large the outbuilding can be compared with the host property. It is necessary to consider proposals in the context within which they would be situated; an outbuilding that may be considered incidental to the enjoyment of a substantial dwelling with many occupants and large grounds may not be incidental if situated in the garden of a small cottage with a single occupant. Size alone is not necessarily a determining factor and a wide range of outbuildings, for different purposes may be permitted under class E, depending on the specific circumstances.
6. Secondly, the assessment to be made is not whether the outbuilding is incidental to the original or extended dwellinghouse but whether it is incidental to what existed on the date that the LDC application was made. This interpretation is consistent with the actual wording of the relevant passage of the GPDO. For example, class E(a) refers to "...a purpose incidental to the enjoyment of the dwellinghouse as such...". The word "original" is not included in this clause but is in some of the requirements that follow in paragraph E.1..
7. Turning to the particulars of this case, the evidence, which includes detailed drawings, shows that the proposed outbuilding would be about some 9 metres by 16 m in length along the south elevation. It would be 9 m in length on the shorter north elevation. The internal floor area of the garage room would equate to some 78.5m². The external footprint of the proposed outbuilding for use as a garage and games room would equate to some 116.7m². The appellant explains the proposed garage realistically provides space for two vehicles, which is hardly surprising given its awkward shape. Be that as it may, the garage would also provide a workbench and storage for tools, lawnmowers and garden machinery, although the appellant also has heavy plant and machinery, but these would be stored elsewhere.
8. The evidence is less clear about the need for the proposed games room. There is an existing annex, under the appellant's ownership, in use for residential purposes but located outside the application site. Although previously intended as a games room, it currently serves ancillary residential functions. The representations do not clearly and unambiguously show why the annex, nor for that matter the existing dwellinghouse, cannot house a snooker table or accommodate a games room. The complaint is that the Council is fully aware of the use of each building including the dwelling. Nevertheless, the onus is on the appellant to show a building of the size proposed is genuinely and reasonably required.
9. The appellant criticises the Council's approach, alleging inconsistency compared to prior LDC applications for similar outbuildings. For instance, a previous outbuilding proposal was found to breach Class E's physical tolerance, yet its large size was not contested. The appellant further argues that reliance on unrelated appeal decisions is misplaced and does not

³ *Wallington v SoS for Wales* [1990] 62 P & CR 150; *Holding v FSS* [2004] JPL 1405; *Croydon LBC v Gladden* [1994] 1PLR 30.

⁴ *Peche d'or Investments v SSE* [1996] JPL 311.

establish precedent for this site. Nevertheless, I am concerned about the proposed outbuilding. To my mind, although the proposed use would be functionally linked to the dwellinghouse, the overall design suggests a level of unreasonableness that would lend itself towards the unrestrained whim of the occupier as there is insufficient evidence to justify the size and scale of the proposed outbuilding.

Other matters

10. Under the 1990 Act, operations are lawful if no enforcement action may be taken against them and they do not contravene any current enforcement notice requirements. The representations exhibit confusion over whether the notice applies to the proposed development, given its description involving demolition of an existing garage and construction of a new building comprising a garage and games room. Regardless, the proposal fails to meet the basic criteria of Class E and would not have been lawful at the date of the LDC application.

Overall conclusion

11. For the reasons given above I conclude, on the evidence now available and applying the correct approach and balance of probability test, the Council's refusal to grant a LDC in respect of the outbuilding was well-founded, albeit for different reasons, and that the appeal should fail. I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

A U Ghafoor

INSPECTOR