



Appeal Decision

by Nick Fagan BSc (Hons), DipTP, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 7 November 2025

Appeal Ref: APP/V4305/X/24/3351740

Alderley, Water Lane, Tarbock Green, Prescot, Merseyside L35 1RE

- 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 Darrin Addams against the decision of Knowsley Metropolitan Borough Council.
 - The application ref 23/02813/CLD, dated 30 November 2023, was refused by notice dated 20 March 2024.
 - 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 construction of a building for garage space and space incidental to enjoyment of the dwellinghouse.
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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.

Preliminary Matter

2. The outcome of the appeal turns on considering relevant aspects of planning legislation including evidence provided of the alleged development and not on assessing matters of planning merit that would normally require a visual site inspection of the premises. I have therefore been able to determine the appeal without a site visit. Neither side has been prejudiced by this course of action.

Main Issue

3. The main issue, as usual in LDC appeals, is whether the Council's decision to refuse a LDC was well-founded.
4. LDC applications and appeals are determined on the balance of probability, and the onus is firmly on the appellant to establish the lawfulness of the development. If the LPA has nothing to contradict the appellant's submissions or otherwise make his version of events less than probable, it should grant the LDC provided the appellant's evidence alone is sufficiently precise and unambiguous on the balance of probability.
5. The Council refused this application because it considered the applicant had failed to demonstrate as a matter of fact and degree that the proposed building would be genuinely subordinate and reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Consequently, the Council alleges that it would not be permitted development (PD) under Schedule 2, Part 1, Class E of the GPDO¹ and would therefore require planning permission.

¹ The Town and Country Planning (General Permitted Development) (England) Order 2015

Reasons

6. The issue here is whether the proposed building would be reasonably required for purposes incidental to the dwellinghouse. Whether it would be subordinate in size to the existing (extended) dwelling is a consideration, but not one that is necessarily determinative.
7. An incidental use is one which is functionally related to the primary use of the property. As the Council says in its appeal statement: *'The test to be applied is whether the uses of the proposed building, when considered in the context of the 'planning unit', were intended and would remain ancillary or subordinate to the main use of the property as a dwellinghouse. Size may be an important consideration but it is not by itself conclusive.'*
8. I acknowledge that the *Emin* judgement² considered that it is necessary, in the context of a particular planning unit, that *'the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse.'* And that the *Wallington* case³ established that it is necessary to consider whether the relevant purpose is incidental to the particular dwellinghouse rather than any dwellinghouse.
9. There is no contention that the proposed building would infringe any of the exceptions to such outbuildings constituting PD under E.1 or E.2 of Class E. The Council's sole reason for refusing the application is that it would not *'be genuinely subordinate and reasonably required for purposes incidental to the enjoyment of the dwellinghouse.'*
10. However, the appellant has made clear in his appeal statement that: *'The outbuilding will only ever be used for domestic purposes relating to the residential dwelling at Alderley, Water Lane.'* The existing pool would be reduced in size (by 37%) and be enclosed by the proposed building, which would also be mainly used for the parking of the appellant's family's cars, motorbikes and garden maintenance vehicles (ride-on lawn mower) as well as a plant room for the pool, a small shower and changing area and a small workbench area and space for storing domestic tools and machinery (including a log-splitter) to be used for repair and maintenance of the house and garden.
11. Indeed, in his Final Comments the appellant includes a proposed plan (Figure 2) showing the layout of the building to accommodate precisely these vehicles, machinery and features and points out that, contrary to the Council's suggestions, storage space is needed for various garden and other tools because the vernacular design of the house and its extensions do not include attic space, even if such space would be reasonable for storing such tools – which I doubt, given their predominantly outside use. As such, I disagree with the Council that the floorspace of the proposed building is based on the *'unrestrained whim of the appellant'*, as per the *Emin* case.
12. There is no doubt that parking vehicles belonging to the appellant and his family, storing tools and workbenches, and enclosing the (proposed smaller) existing pool and related facilities would be purposes incidental to the use of Alderley as a dwellinghouse, as well as being ancillary or subordinate to its use.

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909

³ *Wallington v SSE & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942 (CoA)

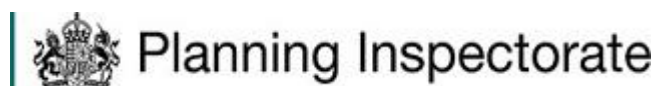
13. The proposed single storey outbuilding at 188m² is, I acknowledge, relatively large; indeed, the Council points out that it would have a footprint 13% larger than the dwelling itself. However, apart from its proposed use which would clearly be incidental and subordinate to the use of the dwellinghouse, it is relevant that it would be situated in the northern part of the garden where the swimming pool with all its now demolished decking is/was situated, as well as the recently demolished garage. The large decking area within which the existing pool was situated combined with the area of the demolished garage totalled 264m², an area nearly 30% greater than the proposed building.
14. For all these reasons I determine that the proposed outbuilding would be PD and would therefore be lawful.

Conclusion

15. 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 construction of a building for garage space and space incidental to enjoyment of the dwellinghouse is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Nick Fagan

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 30 November 2023 the use described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in blue 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 garage and domestic storage building would solely be used for purposes incidental to the use of Alderley as a dwellinghouse, as well as being ancillary or subordinate to its use.

Signed

Nick Fagan

Inspector

Date: **7 November 2025**

Reference: APP/V4305/X/24/3351740

First Schedule

The construction of a building for garage space and space incidental to enjoyment of the dwellinghouse

Second Schedule

Land at Alderley, Water Lane, Tarbock Green, Prescot, Merseyside L35 1RE

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.

Plan

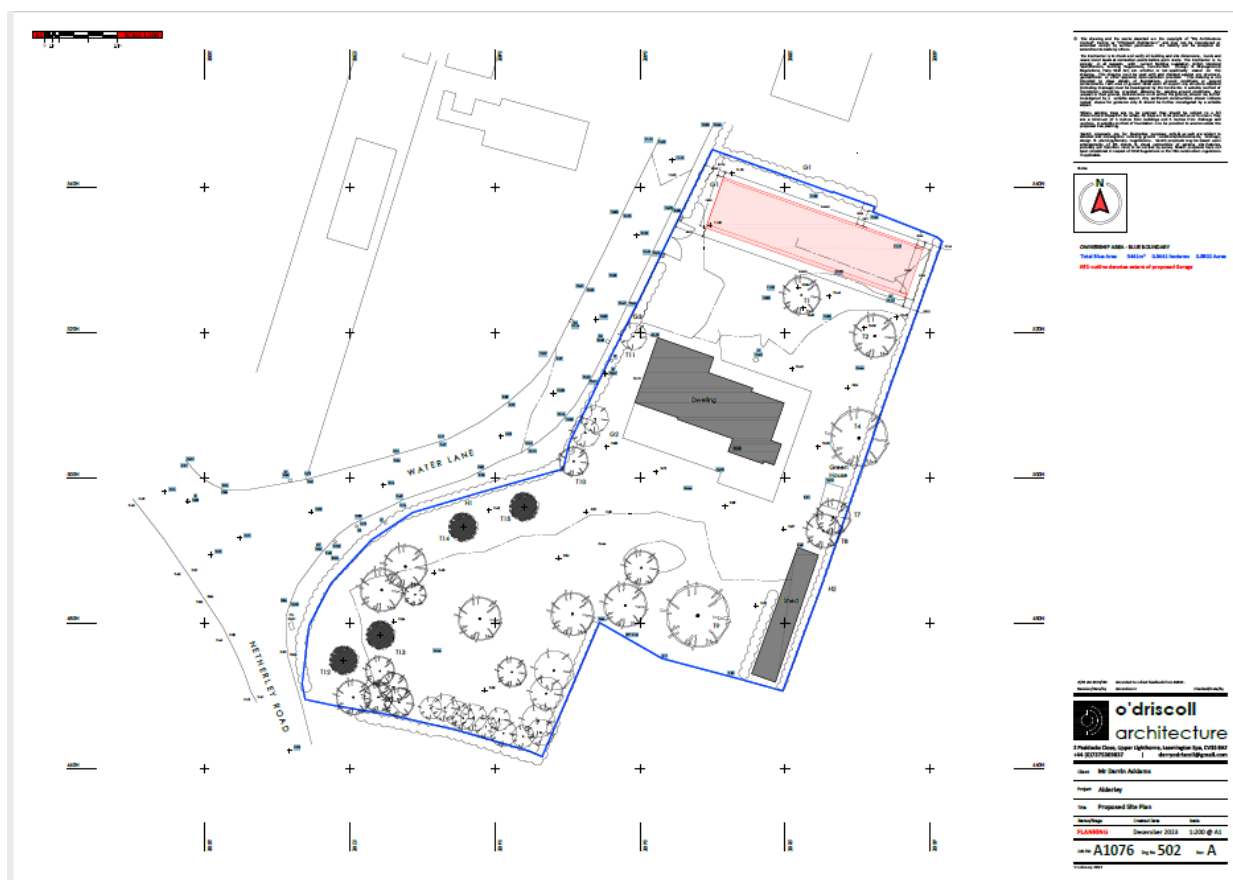
This is the plan referred to in the Lawful Development Certificate dated: **7 November 2025**

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Land at: Alderley, Water Lane, Tarbock Green, Prescott, Merseyside L35 1RE

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Scale: Not to Scale



NB Proposed building shown in pink on the plan above, as submitted with application/appeal.