



Appeal Decision

Site visit made on 20 January 2026

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 13 February 2026

Appeal Ref: APP/P0119/X/24/3357750

Willis House, Northmead Lane, Iron Acton, South Gloucestershire, BS37 9AA

- 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 Jim McAlinden against the decision of South Gloucestershire Council.
 - The application ref P24/01817/CLP, dated 23 July 2024, was refused by notice dated 13 September 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 'Removal of existing out-building and erection of new out-building constructed behind primary dwelling elevation to comply with permitted development criteria for out-buildings'.
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Decision

1. The appeal is dismissed.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue a lawful development certificate (LDC) was well-founded. This will turn on whether the proposed development would have been lawful as at the date of the application. The onus is on the appellant to make their case on the balance of probability and planning merits are not relevant to the assessment.

Reasons

3. Per section 191(2) of the Town and Country Planning Act 1990, development is lawful at any time if (a) no enforcement action may then be taken in respect of it (whether because it did not involve development or require planning permission, because the time for enforcement action has expired, or for any other reason); and (b) it does not constitute a contravention of any of the requirements of an enforcement notice.
4. The appellant contends that the proposed outbuilding is permitted development (PD) pursuant to Article 3 and Class E(a) of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Class E grants planning permission for *'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'*.
5. The LPA accepts that the proposed outbuilding would meet with the limitations in paragraph E.1 of Class E but found that the appellant had not shown that the building would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Site history and proposed outbuilding

6. Retrospective planning permission was sought in respect of a home office/garage in the north eastern part of the site which was dismissed at appeal¹ in April 2023. A subsequent application² for alterations to the existing outbuilding was refused in October 2024. An enforcement notice was issued in respect of this outbuilding which took effect on 3 October 2024. The LPA has indicated that a separate enforcement case was also open for the use of this outbuilding as a holiday let.
7. Following refusal of the application which is the subject of this appeal, a further LDC application was made for a proposed outbuilding to accommodate a swimming pool, gym and associated uses of the same footprint as that proposed in this appeal. This refusal is the subject of another appeal³.
8. The proposed outbuilding in this case would contain three main rooms comprising a 'game room' shown as containing a pool/snooker table, a gym containing numerous items of large equipment, along with a room labelled as 'open space garden room enclosure'. It would also have two separate shower rooms.

Assessment

9. In assessing whether a proposed use is for a purpose incidental to the enjoyment of a dwellinghouse, regard should be had to the nature and scale of the use proposed. It needs then to be shown that the building is genuinely and reasonably required to accommodate the proposed uses. Whether a building is 'reasonably required' does not rest solely on the unrestrained whim of the householder but equally, reasonable aspirations of householders should not be frustrated provided that the use is sensibly related to the enjoyment of the dwelling.
10. The building proposed would be of substantial size with a footprint of some 168 square metres which the LPA states is comparable to the footprint of the main house. I accept though that size is not determinative and acknowledge also appeal decisions cited⁴ in which outbuildings were found to be PD under Class E notwithstanding that these were of significant size relative to the host property.
11. As to the proposed uses, in my view, the use labelled as 'open space garden room enclosure', lacks the necessary clarity as to the intended use of that area such as to enable proper assessment under Class E. While I accept that other appeal decisions cited indicate a wide range of uses can be deemed incidental, it is not possible to determine on the available evidence whether or not this aspect would represent an incidental residential use.
12. The indicated uses as a game room and gym would have a normal functional relationship with the primary residential use of the house and likely could not be accommodated in the main house. These are in principle capable of being incidental uses. However, in order to be PD under Class E, there must be a genuine reason as to why space for these uses is reasonably required by those who live in the dwellinghouse.
13. There is no detailed information given as to why the occupants of the host property reasonably require a home gym, game room or 'garden room'. Nor is there any

¹ Ref: APP/P0119/W/22/3296147

² Ref: P24/01825/F

³ Ref: APP/P0119/X/24/3357753

⁴ Refs: APP/F5540/X/17/3182248; APP/R5510/X/17/3167037; APP/R5510/X/16/3143778; APP/P0119/X/18/3210248

substantive information as to why occupants would require such large spaces for these uses. The game room, for example, is indicated as only containing a pool/snooker table and therefore seems to have a somewhat excessive amount of circulation space.

14. The gym area proposed is a sizeable space accommodating a large quantity of gym equipment that would not be typical in a home gym context. Further, while a shower room would commonly be part and parcel of a home gym use, no explanation has been given as to why two separate shower rooms would be reasonably required in this case.
15. The appellant comments that the application is very similar to another LDC granted by the Council⁵. I do not have full details related to that application but LDC applications fall to be determined on their own specific factual circumstances and there is nothing to suggest that the building approved was directly comparable to that proposed here.
16. The appellant has not then demonstrated on the balance of probability that the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse. It would not be PD under Class E.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for 'Removal of existing out-building and erection of new out-building constructed behind primary dwelling elevation to comply with permitted development criteria for out-buildings' is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

V Bond

INSPECTOR

⁵ Ref: P23/01692/CLP