



Appeal Decision

by **S A Hanson BA(Hons) BTP MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 5th October 2026

Appeal Ref: APP/G3110/X/25/3374792

3 Lytton Road, Oxford OX4 3PB

- 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 S Khanam against the decision of Oxford City Council.
 - The application ref 25/01806/CPU, dated 15 July 2025, was refused by notice dated 9 September 2025.
 - 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 described as: Garden building.
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Decision

1. The appeal is dismissed.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this case, for proposed development, where all the information is included with the application and appeal documents, a decision can be reached on the papers. Both parties were informed of my decision not to visit, and no objections were received. I consider that neither appeal party has been prejudiced by my proceeding in this manner.
3. Section 192 of the Town and Country Planning Act 1990 enables any person to ascertain whether a proposed use or operation would be lawful at the time of the application. A certificate is not a planning permission, thus, the planning merits of the matters applied for do not fall to be considered. The decision is based strictly on the evidential facts and on relevant law and judicial authority.
4. Planning permission was granted previously under reference 24/02194/FUL for redevelopment and extension works at the property. Although that permission removed certain permitted development rights, it is common ground that the permission has not been implemented. Accordingly, the dwelling retains the benefit of the permitted development rights conferred by the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO).

Main Issue

5. The main issue is whether the Council's refusal to grant an LDC was well-founded.

Reasons

6. Article 3(1) of the GPDO grants planning permission for classes of development described in Schedule 2. Class E of Part 1 permits the provision within the curtilage of a dwellinghouse of any building, or other means of enclosure, required

for a purpose incidental to the enjoyment of the dwellinghouse, as such, subject to specified limitations and conditions.

7. The proposed garden building would be sited within the curtilage of the dwellinghouse and measuring 8.2m x 6.4m would provide approximately 52m² of floor area for a home office, gym and WC. The host dwelling is a two-storey end-of-terrace house with an existing floor area of roughly 70m². I am informed that if the planning permission granted under reference 24/02194/FUL was implemented, the floor area would increase to 98.5m². Since the permission has not been implemented it does not affect the size of the existing house.
8. The Council refused the application because they considered the proposal would not be permitted by Class E of the GPDO. This was because the size of the proposed garden building was not considered to be incidental to the enjoyment of the dwellinghouse. In addition, it was considered that the proposal would fail to meet the requirements of part E1(e)(ii) as the building would be within 2m of the boundary and would exceed 2.5m in height.
9. Turning to the dimensional limitations first, the Council maintains that the building would be within 2 metres of a boundary and therefore subject to the height restriction in Class E.1(e)(ii). However, the submitted drawings and appellant's submissions indicate that the building would be positioned at more than 2 metres from the property boundary. Accordingly, the limitation in Class E.1(e)(ii) is not engaged. Instead, the relevant restriction is contained within Class E.1(e)(i), which permits a maximum overall height of 4 metres for a building with a dual-pitched roof. The drawings show compliance with that limitation, and there is no reason to dispute that the eaves height would also comply with the relevant limitations. I therefore find that the proposal satisfies the dimensional requirements of Class E.
10. Class E permits a broad range of buildings and structures for purposes incidental to the enjoyment of the dwellinghouse. However, the mere fact that a proposed activity can be carried out within a building does not, of itself, bring the development within the scope of the Class. The Courts have held that the word 'required' in Class E should be interpreted to mean 'reasonably required'. While incidental in this context connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse, 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, as such. That is a matter of fact and degree based on the particular circumstances of the matters.
11. The words 'as such' are also important because they require the claimed incidental purpose to relate to the enjoyment of the property in its capacity as a dwellinghouse. The assessment is therefore not confined to whether the proposed activities could, in principle, take place within an outbuilding. Rather, it is necessary to consider whether the proposal would remain genuinely incidental to the residential enjoyment of the dwellinghouse as such.
12. When evaluating whether a building proposed under Class E is reasonably required for the enjoyment of the dwellinghouse, personal preference is not determinative. As established in relevant case law, the matter does not rest solely on the 'unrestrained whim' of the householder but requires an objective assessment of whether, having regard to all the circumstances of the case, the

building proposed is reasonably related to and supportive of the enjoyment of the dwellinghouse. In carrying out that assessment, the nature of the proposed use, the scale of accommodation proposed and its relationship to the host dwelling are all relevant considerations.

13. The submitted plans show a detached garden building providing approximately 52m² of floor area, divided between an office, gym and WC. Activities of this nature are capable, in principle, of amounting to purposes incidental to the enjoyment of a dwellinghouse. However, while I note the appellant's claim that there is insufficient space within the main house to accommodate these activities, limited substantive evidence has been provided regarding the anticipated nature and extent of their use, the operational requirements of the office and gym, or why accommodation extending to approximately 52m² would be reasonably related to those purposes. Although such matters are not determinative in themselves, they are relevant when considering whether the extent of accommodation proposed bears a reasonable relationship to the incidental purposes advanced.
14. The proposed accommodation would not provide primary living accommodation or create a separate planning unit. Nevertheless, whether a building is reasonably required involves an objective assessment of whether the nature and extent of accommodation proposed bear a reasonable relationship to the enjoyment of the dwellinghouse as such. In this regard, the proposed building would provide approximately 52m² of floor space in association with a dwelling of around 70m². While Class E does not impose a requirement of strict necessity, the accommodation proposed would be substantial in relation to the dwellinghouse.
15. Taking these matters together, I am not persuaded that the proposed garden building would function merely as a subordinate and incidental adjunct to the dwellinghouse. Although the intended office and gym uses are capable of being incidental in principle, I am not persuaded on the evidence before me that the building as proposed would properly fall within that description. Consequently, as a matter of fact and degree, the erection of a garden building as proposed by the application would not benefit from the planning permission granted by Article 3 and Class E, Part 1 of Schedule 2 of the GPDO.

Conclusion

16. For the reasons given above I conclude that the council's refusal to grant an LDC in respect of the proposed garden building was well-founded. The appeal is dismissed, and I will exercise the powers transferred to me under section 195(3) of the 1990 Act as amended.

S A Hanson

INSPECTOR