



Appeal Decision

by Peter Willows BA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 2 December 2022

Appeal Ref: APP/H0738/X/22/3302579

The Garth, Letch Lane, Carlton, Stockton-on-Tees TS21 1ED

- 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 Malcolm Hall against the decision of Stockton-on-Tees Borough Council.
 - The application ref 22/0943/CPL, dated 12 April 2022, was refused by notice dated 7 June 2022.
 - 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 a 4 bay domestic garage.
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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.

Main Issue

2. The main issue is whether the Council's decision to refuse to issue an LDC was well-founded. This turns on whether the proposed garage would be required for a purpose incidental to the enjoyment of the dwellinghouse as such, so benefitting from the provisions of Class E of Part 1 of Schedule 2 of the *Town and Country Planning (General Permitted Development) (England) Order 2015* (the GPDO).

Reasons

3. Class E permits the provision within the curtilage of the dwellinghouse of 'any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such'.
4. Class E includes various limitations and conditions, many concerned with the size of the building, but it is common ground that the proposed building would accord with these. The dispute centres on the question of whether the building would be genuinely required for purposes incidental to the enjoyment of the dwellinghouse as such. If not, it cannot be permitted under Class E.
5. The Government's *Permitted development for householders - Technical Guidance* assists in the interpretation of the GPDO. In relation to Class E it advises that the rules allow a wide range of buildings as long as they can properly be described as having a purpose incidental to the enjoyment of the house. It explains that a purpose incidental to a house would not cover 'normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom,

- or kitchen'. However, the examples given of the kind of buildings that may be permitted include garages.
6. Whether or not a building is 'required for a purpose incidental to the enjoyment of the dwellinghouse as such' depends on the specifics of the particular case. In *Emin v SSE and Mid Sussex DC [1989] JPL 909*, it was held that 'the test to be applied is whether the uses of the proposed buildings, when considered in the context of the planning unit, are intended and will remain ancillary or subordinate to the main use of the property as a dwelling house'. It was necessary to consider whether the buildings were 'genuinely and reasonably required or necessary in order to accommodate the proposed use or activity'.
 7. In this case the Council's concerns are understandable. An incidental use implies a degree of subordination. The Garth is a 3 bedroom bungalow and is already served by a small garage (now modified to provide access straight through to the rear) and a large workshop building. The latter was recently built to allow the appellant to indulge in his classic car hobby, and provides ample space to garage 2 or more cars in addition to an extensive and well-equipped workshop area. The proposed development would see the erection of another large building (about 12.1m x 6m according to the Council) capable of garaging an additional 4 cars. Thus, the garaging at the site would be extensive when compared to the size of the dwelling.
 8. However, the appellant has explained that the existing workshop is intended exclusively for his classic cars, a claim I have no reason to doubt. He has also explained that the occupants of the dwelling have 5 cars between them (there is reference to a 6th car as well, but I understand that this belongs to a relative who visits the family home frequently but does not live there). While that is a large fleet, the claim that these cars are all for the domestic use of the appellant and his family is not disputed. Although there are also external parking spaces available (and these are likely to remain) it does not seem unreasonable for the appellant to wish to garage most of the cars. Thus, it appears to me, on the balance of probability, that the garage is genuinely and reasonably required in order to provide garaging for the cars of the appellant and his family in connection with the residential occupation of their home.
 9. As the Council points out, the existing workshop building is large and could clearly accommodate more than the 2 cars the appellant has in mind. But the question is not whether the appellant could manage with less garage accommodation, but rather whether what is proposed is genuinely and reasonably required. I can see no reason to doubt that it is in this case. Since the cars are already kept at the property in connection with its residential occupation, use of the proposed building for garaging them is not excessive and would be a use incidental to the enjoyment of the dwellinghouse.
 10. I have had regard to the appeal decision referred to by both parties, which concerned the construction of two detached outbuildings within the curtilage of a property in Hertfordshire¹. However, that was a very different proposal and does not assist in the assessment of this scheme. The inspector in that case drew a distinction between the needs of the occupiers of the dwelling and need arising from visitors to the property, and I have likewise based my assessment on the needs of the current occupants of the property and not on the needs of visitors.

¹ APP/A1910/X/16/3158059

Conclusion

11. 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 in respect of a 4 bay domestic garage was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and issue the LDC applied for.

Peter Willows

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 12 April 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed 4 bay domestic garage is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse and, consequently, is development permitted by Class E of Part 1 of Schedule 2 to the *Town and Country Planning (General Permitted Development) (England) Order 2015*.

Signed

Peter Willows

Inspector

Date: 2 December 2022

Reference: APP/H0738/X/22/3302579

First Schedule

4 bay domestic garage

Second Schedule

Land at The Garth, Letch Lane, Carlton, Stockton-on-Tees TS21 1ED

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 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, 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 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: 2 December 2022

by **Peter Willows BA MRTPI**

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Scale: Not to Scale

