

East Herts Council
via Planning Portal



21st September 2023

To Whom it May Concern

Application for a Certificate of Existing Lawful Use or Development – To regularise the erection of two outbuildings at Little Croft, Ermine Street, Colliers End, Ware, Hertfordshire SG11 1EH

We have been instructed by our clients, Mr & Mrs Borgia, whom reside at the above address to submit an application for a Certificate of Lawful Development to regularise the planning position with regards to two separate outbuildings that have been erected within the residential curtilage of their property.

The two outbuildings have been erected as buildings that would be incidental to the enjoyment of a dwellinghouse. The location of the outbuildings and their dimensions are contained within the drawings accompanying this application.

It is our view that both outbuildings fully comply with the provisions of schedule 2, Part 1, Class E of the General Permitted Development Order, so are therefore both permitted development and therefore immune to enforcement action.

The first outbuilding shown on drawing number P007, has been erected as a games room, bar, home office, gym and ancillary residential accommodation for the applicant's family and in particular their children when they come to stay.

The second outbuilding is for the secure garaging of vintage cars. Mr Borgia collects, exhibits and races vintage cars in his own personal time as a hobby and also spends his spare time working on the cars within the garage.

Accordingly, both outbuildings clearly meet the definition of being incidental to the enjoyment of a dwellinghouse.

The table below also demonstrates the proposal's compliance with the key criteria contained within Schedule 2, Part 1, Class E of the General Permitted Development Order:

| | Key Question | Y/N |
|----|---|------------|
| 1 | Will the total area of ground covered by the building(s) exceed 50% of the area of the curtilage, excluding that covered by the original dwelling? | No |
| 2 | Will any part of the outbuilding be situated on land that is forward of the principal elevation of the original dwelling? | No |
| 3 | Will the building have more than a single storey and if the building has a dual-pitched roof will the external height above natural ground level exceed 4m? | No |
| 4 | If the building has a flat or mono-pitched roof will the external height above natural ground level exceed 3m? | N/A |
| 5 | If any part of the building is within 2m of the boundary of the curtilage will any part of it exceed 2.5m in height above natural ground level? | No |
| 6 | Irrespective of the location or roof design, will the eaves height exceed 2.5m above natural ground level? | No |
| 7 | Will the building be located within the curtilage of a listed building? | No |
| 8 | Will it include a balcony, veranda, decking area, or other raised platform? | No |
| 9 | Will it relate to a dwelling (Class E covers buildings that are for a purpose incidental to a house. Class E does not provide permitted development rights for works related to a house - for example, extensions to a house - which are covered by other Classes of the rules on permitted development)? | No |
| 10 | Will it include a microwave antenna (permitted development rights for microwave antenna are covered under Class H of Schedule 2 to the Order)? | No |
| 11 | If the property is in a conservation area will any part of the building be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwelling? (i.e. will it be to the side of the house?) | N/A |

The above demonstration confirms the outbuildings compliance with the provisions of the General Permitted Development Order and as such the Lawful Development Certificate should be granted.

However, we are aware that there has been a previous appeal decision on this site which questioned whether the storage of classic cars can be considered as incidental to the primary use of the dwellinghouse. This appeal decision (Ref APP/J1915/X/17/3181880) was dated, 27th April 2018. This appeal decision confirmed that there was no question that the outbuilding met the criteria outlined above. However, the Inspector, at this time had difficulty in considering whether the size of the garage in the proposed outbuilding would

have been reasonably required to accommodate the number of vehicles owned by the family and for which there might be a genuine requirement to be garaged and in a purely objective assessment, the Inspector concluded that the garage element of the proposed outbuilding is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Since this time there has been further appeal decisions that contradict the previous Inspectors reasoning on this matter. We enclose two such appeal decisions (Appeal Reference APP/J1860/X/19/3243455) dated 26 May 2020 and Appeal Ref APP/H0738/X/22/3302579 dated 2 December 2022 both of which debate the issue of whether a proposed garage would be required for a purpose incidental to the enjoyment of a dwellinghouse as such, so benefiting from the provisions of Class E of Part 1 of Schedule 2 of the GPDO. Both appeals were allowed and in both cases the inspectors concluded that the Council's refusal to grant a certificate of lawful use or development in respect of a garage used to store classic cars was not well-founded and that the appeals should succeed and the LDC issued. Some interesting conclusions that are also relevant to this case are as follows:

Dealing firstly with the size, whilst it would be a large outbuilding, the footprint of which would exceed that of the dwelling, in terms of total volume, it would not be much larger, if at all, than that of the dwelling. The size of other buildings in the vicinity is of little relevance to the key considerations in respect of lawfulness. Nor in the circumstances of this case, is the relationship between the size of the building to the remaining garden of great importance; the justification for the building is not related to the use of the garden, and therefore so long as the 50% criterion set out in Class E.1(b) would be met, which it would be in this case, relative sizes are not determinative.

As a matter of principle, it does not seem unreasonable to me that the occupier of a dwellinghouse should seek to house his private collection of classic cars at their home, not only in terms of convenience but also in terms of security, and it is not a matter of being at the whim of an individual owner or occupier. I have no doubt that the size is genuinely and reasonably required to accommodate the owner's vehicles and to facilitate his hobby, having regard to the way in which the existing collection is stored. Whilst the photographs of the existing rented building show features which may be seen in a commercial garage, to my mind, it could not be mistaken for one, as it is clearly the workshop of an enthusiast.

Collecting as a hobby can often involve owners possessing many more examples of their subject of interest than might be found in a normal home. The relevant question in this case is whether this hobby would be ancillary to the residential use of the dwellinghouse and is reasonable in the circumstances. Despite the extensive collection of vehicles, and the paraphernalia likely to be required in connection with their maintenance and restoration, I consider that the hobby use is nevertheless subordinate to the main use of the property as a dwellinghouse. There is no suggestion that anyone other than the owner would use the workshop, or that a commercial enterprise is involved.

I recognise that the large size of the building would look out of proportion with the modest

outbuildings in the gardens of nearby dwellings. But that is not the test; it is whether it is reasonably required for an incidental activity. Looking at matters in the round, the overall nature, scale and purpose of the proposed outbuilding is not unreasonable in the particular circumstances of the case. I am therefore satisfied on the balance of probabilities that the building would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such, and that the building would be permitted under Class E.

These, more recent decisions, set a precedent for the determination of this application.

The Council have previously indicated that the Air Conditioning units on the southern outbuilding should be included within the description of development. However, whilst now shown on the plans, we are of the view that these air conditioning units fall within the remit of being permitted development, given that they are not within 1m of the boundary and as such are not included within the description of development.

Similarly, the temporary storage containers are now shown on the proposed site plan, at the request of the LPA, but these are only temporary structures to store building materials in during the development of the original dwelling. They are therefore not included within the description of development.

Also, the Council may question whether these outbuildings can be considered as being incidental to the use of a dwellinghouse as the dwellinghouse is currently being developed. However, the outbuildings were erected at a time when the dwellinghouse was not being developed and was being lived in by the applicants. Given the grant of planning permission for the extension to the dwellinghouse and the implementation of this permission, it is also considered that it can not be said that the use of this land as a dwellinghouse has been abandoned or ceased, it is merely in development hiatus.

Should you need any further clarification on any of the above, please contact the undersigned.

Yours Sincerely



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