



Appeal Decision

Site visit made on 18 May 2020

by JP Roberts BSc(Hons) LLB(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 26 May 2020

Appeal Ref: APP/J1860/X/19/3243455

Moseley Saw Mills, Moseley Road, Hallow WR2 6NJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr P Stanworth against the decision of Malvern Hills District Council.
 - The application Ref 19/01273/CLPU, dated 20 August 2019, was refused by notice dated 16 October 2019.
 - 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 erection of a proposed outbuilding to the rear of the house.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is considered to be lawful.

Main Issue

1. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on whether or not the development would be lawful if begun at the time of the application for the certificate. The planning merits of the development are not relevant to the appeal and there is no planning application before me. Accordingly, the main issue is whether the Council's decision to refuse the application was well-founded.

Reasons

2. It is proposed to erect a large single-storey outbuilding in the rear garden of a detached house. There is no dispute that the building would comply with the technical criteria set out in Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015. What is at issue is whether the proposal would be used for a purpose incidental to the enjoyment of the dwellinghouse as such, and whether the development would be reasonably required for that use.
3. The leading case on the scope of buildings used for purposes incidental to the enjoyment of the dwellinghouse as such is *Emin v Secretary of State for the Environment and Mid-Sussex District Council (1989)*. Whilst the Court

acknowledged that such questions are largely a matter of fact and degree, some key principles were set out. The Court held that the nature and scale of the activities are important as there must be a prospect that they could go beyond a purpose merely incidental to the enjoyment of the dwelling house as such and constitute something greater than a requirement related solely to that use. Thus, the physical size could be a relevant consideration, but it is not by itself conclusive, with the Judge saying "it would be surprising if the mere size of the dwelling could dictate the physical size of a facility within a building and the size of the building itself whereas the owner of a small dwelling might want a larger facility for his enjoyment the owner of a larger house may not."

4. The Court also acknowledged that the fact that such a building has "to be required for a purpose associated with the enjoyment of a dwelling house cannot rest solely on the unrestrained whim of him who dwells there but connotes some sense of reasonableness in all the circumstances of the particular case". It also emphasises that incidental uses should remain at all times ancillary or subordinate to the use of the dwelling house, and that it is necessary to determine whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that incidental purpose.
5. Also of relevance is the decision of *Wallington v the Secretary of State for Wales & Montgomeryshire District Council* [1991] JPL 942, in a case involving the keeping of 44 dogs as a hobby. The Court rejected the proposition that because a use is a hobby therefore it must follow that it is incidental to the enjoyment of a dwellinghouse.
6. 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.
7. The building is said to be required in connection with the appellant's hobby of restoring classic cars and motorbikes. I have been provided with photographic evidence of the appellant's collection of vehicles, which are currently housed in rented premises, together with current insurance details for the vehicles. The collection comprises some 8 motorbikes, 11 cars and what I believe may be a tractor – nearly all of the cars are small models by modern standards. The registration numbers either predate the date-related system, introduced in 1963, or are from the 1960s, or early 70s, so I consider that they are all vintage vehicles. The appellant has explained that it is his hobby to restore the vehicles and show them at various vintage car rallies around the country. They are insured for a considerable sum, and I accept that they are required to be kept securely.
8. 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.

9. 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.
10. 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.

Conclusion

11. I find that the proposed development would be one permitted under Class E of the Order, and that the Council's decision to refuse to issue a certificate was not well-founded. The appeal is therefore allowed.

JP Roberts

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 20 August 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black 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 development would benefit from the deemed permission granted under Article 3 and Class E of Part 1 to Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

JP Roberts
INSPECTOR

Date 26 May 2020
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First Schedule

Proposed outbuilding to the rear of the house as shown on plans Refs: 564-02 and 564-03.

Second Schedule

Land at Moseley Saw Mills, Moseley Road, Hallow WR2 6NJ.

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: 26 May 2020

by **JP Roberts BSc(Hons), LLB(Hons), MRTPI**

Land at: Moseley Saw Mills, Moseley Road, Hallow WR2 6NJ

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Not to scale

