
Appeal Decision

Site visit made on 1 June 2016

by Paul Freer BA (Hons) LLM MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 1 August 2016

Appeal Ref: APP/T0355/X/16/3145610
Farthings, Bridge Road, Maidenhead SL6 8DF

- 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 Lillington against the decision of Council of the Royal Borough of Windsor and Maidenhead.
 - The application Ref 15/03317, dated 2 October 2015, was refused by notice dated 1 December 2015.
 - 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 detached outbuilding to serve as a garage block and an area of hardstanding.
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Summary Decision: The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.

Application for costs

1. An application for costs was made by Mr Lillington against the Council of the Royal Borough of Windsor and Maidenhead. This application is the subject of a separate Decision.

Main Issue

2. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant **to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded.**
3. The provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), subject to the limitations set out at Classes E.1, E.2 and E.3. The Council is satisfied that the proposed

outbuilding complies with the limitations at Classes E.1, E.2 and E.3, and I see no reason to take a different view.

4. The area of dispute is whether the proposed outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse as such. Consideration of this issue raises two questions: is the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed outbuilding reasonably required for that purpose.
5. In terms of whether the purpose of the proposed outbuilding incidental to the enjoyment of the dwellinghouse as such, case law confirms that the keynote is reasonableness. Case law establishes that what is abnormal is not necessarily unreasonable, but also that what could be regarded as incidental does not depend on the unrestrained whim of the occupier. This approach follows that taken in *Croydon LBC v Gladden*¹, in which the Court held that the concept of what was incidental to the enjoyment of the dwellinghouse as such involved an element of objective reasonableness and was not a matter solely at the whim of the individual owner or occupier.
6. The appellant confirms in a statutory declaration that the outbuilding is intended to provide garaging for his private collection of sports and classic cars in connection with his hobby of maintaining and driving those cars. 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 sports and classic cars at his place of residence, not only in terms of convenience but also in terms of security. In my view, these are considerations that apply universally and go beyond the whim of an individual owner or occupier.
7. Although the number of vehicles that would be parked in the outbuilding in this case may be considered abnormal, in my view this needs to be looked at the context of the stated purpose of housing a private collection of 10 sports and classic cars rather than the parking of vehicles for ordinary use. To my mind, whilst unusual, it does not seem unreasonable to have a private collection of cars of this scale in the context of a hobby enjoyed from a dwellinghouse. Looked at objectively, it therefore seems to me that the number of cars involved and the size of building required to accommodate them is not so great as to be unreasonable in the context of a hobby enjoyed from this particular dwelling. It follows that an outbuilding used in connection with that hobby would itself be reasonably incidental to the purpose of the dwellinghouse.
8. In terms of whether the proposed outbuilding would be required for that purpose, the function of the outbuilding is to provide secure and weatherproof garaging for a collection of valuable cars. The appellant explains that the cars in his collection are currently stored at various locations. The appellant goes on to explain that the dispersal of his car collection is inconvenient and makes it more difficult for the appellant to undertake and enjoy his hobby. The consolidation of the collection **at the appellant's place of residence would** facilitate his participation in and enjoyment of that hobby. For these reasons, the function of the proposed outbuilding is reasonably necessary for the intended purpose.

¹ *Croydon LBC v Gladden* [1994] 1 PLR 30

9. It is settled case law that the size of the building is not, in itself, determinative of whether a development falls within the provision of Class E². Nevertheless, the appellant explains that the proposed outbuilding has been specifically designed to accommodate 10 cars to reflect the number of cars in his collection. The appellant has provided documentary evidence to prove that all but one of the cars in his collection are registered in his name as owner at the address of the appeal site, albeit that they are currently stored at variations locations. The proposed outbuilding has been specifically designed to accommodate those 10 cars and, on that basis, the size of the proposed outbuilding is commensurate with its intended purpose and not an unrestrained whim on the part of the appellant.
10. I therefore consider that the proposed outbuilding is of a size that is reasonably required for a purpose incidental to the enjoyment of this particular dwellinghouse. Moreover, even when the proposed outbuilding is taken together with the existing parking on the site, I consider that the overall nature, scale and purpose of the proposed outbuilding is not unreasonable in the particular circumstances of the case.
11. The appeal proposal also includes an area of hardstanding to the side of the main dwelling and in front of the proposed outbuilding. The provision within the curtilage of a dwellinghouse of a hard surface for any purpose incidental to the enjoyment of the dwellinghouse as such is permitted by Class F(a), Part 1, Schedule 2 of the GPDO, subject to the limitations and conditions set out at Classes F.1 and F.2. The Council is satisfied that the proposed area of hardstanding accords with Class F(a), including the limitations and conditions set out at Classes F.1 and F.2. Again, I see no reason to take a different view.
12. I consider that the proposed detached outbuilding and area of hardstanding would be required for a purpose incidental to the enjoyment of the dwellinghouse known as Farthings. As such, having regard to the conditions and limitations therein, the outbuilding and hardstanding are permitted by Class E and Class F, Part 1, Schedule 2 of the GPDO respectively.
13. For the reasons given above, I **conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the detached outbuilding to serve as a garage block and an area of hardstanding at Farthings, Bridge Road, Maidenhead SL6 8DF was not well-founded and that the appeal should succeed.** I will exercise the powers transferred to me in section 195(2) of the 1990 Act as amended.

Formal Decision

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

Paul Freer

INSPECTOR

² *Emin v Secretary of State for the Environment* [1989] J.P.L. 909



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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on dated 2 October 2015 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 development accords with the limitations set out in Schedule 2, Part 1, Class E and Class F of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Paul Freer

Inspector

Date: 1 August 2016

Reference: APP/T0355/X/16/3145610

First Schedule

A detached outbuilding to serve as a garage block and an area of hardstanding (as shown on Drawing Nos: PL-100; PL-101; PL-200; PL-400, dated June 2015).

Second Schedule

Land at Farthings, Bridge Road, Maidenhead SL6 8DF

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:

by Paul Freer BA (Hons) LL.M MRTPI

Land at: Land at Farthings, Bridge Road, Maidenhead SL6 8DF

Reference: APP/T0355/X/16/3145610

Scale: Not to scale

