Planning Statement in Support of Certificate of Lawfulness for Proposed Development

Four Winds - 7-Bay Garage for Classic Car Storage

This statement supports an application for a Certificate of Lawfulness for Proposed Development under Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO). The development proposes a single-storey, 7-bay garage within the curtilage of Four Winds, intended solely for the storage of a classic car collection. The structure aligns with all Class E requirements, serving an incidental purpose that supports the enjoyment of the main dwelling.

1. Development Proposal and Scale

The proposed garage at Four Winds has a floor area of **167 square meters**, positioned within the property's **1.8-acre curtilage**. The existing dwelling measures in excess of **400 square meters** (including approved extensions), and the proposed garage is scaled proportionately to both the dwelling and the grounds. The garage's exclusive purpose is to store classic cars, supporting an established hobby rather than a casual or ancillary use. This is a long standing hobby of over 46years involving the collection of classic cars. These are personal items and were previously stored at the owner's previous residence before he moved to Four Winds earlier this year. The cars are currently stored 32 miles from the owners home. The cars are for personal use only and the proposed garage block will be used for the storage of these and general maintenance and repairs only. The building is utilitarian in appearance and will have no services such as a toilet or kitchen. The building is subordinate in nature and the overall ridge height is only 1m above the finished floor level of the existing dwelling.

2. Addressing Incidental Status, Purpose, and Size

The Council has raised a concern regarding whether the proposed garage can be considered incidental, given that it could "exist in its own right" as an independent structure. However, established case law has clarified that incidental status is not determined by the theoretical independence of a

structure but by whether the use is *functionally related* and subordinate to the enjoyment of the primary dwelling.

In ***Emin v Secretary of State for the Environment*** **(1989)**, the High Court confirmed that an incidental use "need not be essential to the dwelling's primary purpose" but must serve a genuine, subordinate purpose in relation to residential enjoyment. The court stated that "the physical size should not automatically disqualify an outbuilding from being incidental if its purpose is genuinely required for residential enjoyment." Thus, size or potential independence is not disqualifying if the structure genuinely enhances enjoyment of the main dwelling.

Additionally, in **Peche d'or Investments v Secretary of State for the Environment** (1996), the court reiterated that incidental structures may be lawful when they functionally support the primary residence, regardless of whether they could theoretically "exist independently." This principle reinforces that the purpose of the garage as a dedicated car storage facility justifies its size and its subordinate role to the dwelling's enjoyment.

3. Relevant Case Law and Allowed Appeal Decisions Supporting Incidental Use with Structural Details

Several recent allowed appeal decisions provide further context on garages and similar structures used for hobby-related purposes, underscoring that larger incidental outbuildings may be lawful where their purpose and functional connection are clearly established:

- **Fingerpost Cottage, Kidderminster** (APP/R1845/X/23/3321716) – *Allowed*: This appeal permitted a **timber triple-bay garage**, specifically for storing classic cars, with dimensions of **8.95m by 5.9m** and a floor area of **53 square meters**. The Inspector concluded that, although the garage could function independently, it was "subordinate and reasonably connected with the residential use of the dwelling." This decision supports that functional relationship, not theoretical independence, determines incidental status.

- **The Willows, Horndon on the Hill** (APP/M1595/X/20/3263141) – *Allowed*: Here, the Inspector granted approval for a **single-storey garage with a pitched roof** measuring **10m by 6m**. This structure was dedicated to car storage, with the Inspector noting that garages are typical Class E outbuildings when they serve a lawful purpose incidental to residential enjoyment. The approval underscores that purpose rather than potential independence determines compliance.

- **New Holme, Elmesthorpe** (APP/T2405/X/23/3320933) – *Allowed*: This case involved an outbuilding with a floor area of **195 square meters**, permitted for garaging, workshop, and storage. The Inspector acknowledged that "physical size should not automatically negate incidental status," confirming that properties with substantial grounds can support larger outbuildings for genuine incidental uses like classic car storage. This principle supports the scale of the Four Winds garage given the substantial 1.8-acre curtilage.

- **Field View, Kiff Green** (APP/W0340/X/23/3321289) – *Allowed*: Approved here was a **double garage with storage** for tools and garden machinery, with the Inspector concluding that "the size of the building was not excessive for its purpose and was reasonably required for the incidental uses." This further supports that reasonably scaled outbuildings with genuine incidental purposes are consistent with lawful development under Class E.

4. Compliance with GPDO Requirements

The proposed structure meets all GPDO Class E limitations for height, location, and purpose, supporting an incidental use that enhances residential enjoyment through a dedicated hobby space. As in **Field View, Kiff Green** (APP/W0340/X/23/3321289), the Inspector's approval of a substantial outbuilding confirmed that larger structures are permissible when they genuinely enhance residential enjoyment without constituting primary residential use.

5. Conclusion

The proposed 7-bay garage at Four Winds aligns with Class E, GPDO requirements, serving an incidental purpose closely tied to residential enjoyment through a dedicated space for car storage. Supported by *Emin*, *Peche d'or*, *Skerritts*, and relevant allowed appeals, each confirming that purpose and functional relationship—rather than theoretical independence or size—determine incidental status, this application for a certificate of lawfulness should be approved.

Appendix A – Relevant Appeal Decisions.

The Planning Inspectorate

Appeal Decision

Site visit made on 12 December 2023

by S A Hanson BA(Hons) BTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 9 January 2024

Appeal Ref: APP/R1845/X/23/3321716
Fingerpost Cottage, Cleobury Road, Far Forest, Kidderminster DY14 9TA

- 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 Mark Gordon against the decision of Wyre Forest District Council.
- The application ref 23/0161/CLP, dated 6 March 2023, was refused by notice dated 20 April 2023.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which a certificate of lawful use or development is sought is described as a proposed concrete slab and erection of timber triple bay single storey garage.

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the proposed operation which is found to be lawful.

Preliminary matters

2. Section 192(2) of the 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. In any other case they shall refuse the application.

3. In an appeal under s195 of the Act against the refusal of an LDC, the planning merits of the matter applied for do not fall to be considered. The decision will be based strictly on factual evidence, the history and planning status of the site in question and the application of relevant law or judicial authority to the circumstances of the case.

4. The application for the LDC sought a determination as to whether the concrete slab, which is in situ as a base for the garage, would be lawful. This does not form part of the Council's refusal and I have no reason to doubt that it would not be considered permitted development by virtue of Class A of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the GPDO").

Main Issue

5. This is whether the Council's decision to refuse to issue an LDC was well-founded. The decision turns on whether the proposed garage building would benefit from planning permission granted by Article 3(1) and Class E, Part 1 of Schedule 2 of the GPDO.

Reasons

6. Fingerpost Cottage is a detached dwellinghouse, set back from the main road behind three properties which face onto the public highway. There is a garden building to the front of the house and a lean-to timber structure attached to the rear of the property. The dwelling sits in a generous plot with the driveway to the front and side and garden to rear and side.

7. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. It includes, at Part 1, Class E(a), the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the personal enjoyment of the dwellinghouse as such, subject to the limitations set out at Classes E.1, E.2 and E.3.

8. While it is clear from the Council's reason for refusal and appeal submissions that there is agreement that the proposal falls within the physical restrictions of Class E, including those limitations set out in E.1, E.2 and E.3; the development would only be permitted development if the building was required for a purpose incidental to the enjoyment of the dwellinghouse as such.

9. The Council refused to grant the LDC on the grounds that the use of the building would not be lawful. This is because it was considered that the size of the building would be much larger than genuinely and reasonably required to serve its specified incidental purposes. Accordingly, consideration of this appeal raises two questions: is the purpose of the proposed building incidental to the enjoyment of the dwellinghouse as such and, if so, is the proposed building reasonably required for that purpose.

10. While there is no statutory definition of 'incidental' in the GPDO, an incidental use is one which is functionally related to the primary use of the planning unit, which in this case is residential. Where the primary use is as a dwellinghouse, the parking of vehicles for the domestic use of the occupier of the house would be an incidental activity and so too would the repair of the occupier's own vehicles. This is because those are uses which differ in character to the residential use but are being carried out as a function of the enjoyment of the dwellinghouse. The established principle is that the relationship should be one that is normally found and whether a building is required for an incidental purpose will depend on a fact and degree assessment.

11. For a building to be 'required for a purpose incidental to the enjoyment of the dwellinghouse', the Courts have interpreted 'required' as meaning 'reasonably required'. In the context of Class E this translates as reasonably needed for that purpose. The appellant does not need to somehow prove that the building would be 'necessary'. However, whether a building is 'reasonably required' cannot rest solely on the unrestrained whim of the householder, but equally does not need to be anything other than sensibly related to their enjoyment of the dwellinghouse. Judgement as to whether such a building would be reasonably required is a matter of objective fact and degree. The actual physical size of the building is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse.

12. The application plans show that the garage would occupy a position within the residential curtilage some distance from the side of the dwelling. It would face the host dwelling and be situated close to the boundary with a residential property to one side and an area of open land to its rear. The floor area of the proposed garage would measure 8.95m in width and 5.9m in depth. The building would have a flat roof with a maximum height of 2.5m. The plans show a utilitarian style timber-clad building with three up and over garage doors and high-level windows on the side elevations to allow light in while maintaining privacy.

13. In this case, the proposed garage is intended to house three classic cars belonging to the appellant. At my site visit, two of the classic cars were parked at the property and one was shielded from the elements with a protective covering. Having a floor area of some 53sqm, the garage would provide space that is considered commensurate with that required for housing three cars. It is also of a size that would be subordinate in its setting. Furthermore, as I observed at the time of my visit, there is no other suitable covered space to house the appellant's collection within the curtilage of the dwelling.

14. The Council has drawn my attention to a dismissed appeal concerning an LDC for an 'incidental outbuilding'[1]. While there may be some similarities, the Inspector considered that the proposed outbuilding would not be required in its 'entirety' for incidental purposes and that it would be much larger than would genuinely and reasonably be required to serve its specified incidental purposes. This was partially because the proposed use of the space as a TV/cinema room would not materially differ from the use of the existing living room and as such the outbuilding would merely replicate the use of the existing accommodation within the house, extending the primary residential use into the outbuilding. In these circumstances the appeal is not directly comparable to the appeal before me with respect to uses and scale.

15. Overall, I consider that the size of the proposed garage is consistent with the envisaged use and not excessive in this instance. The use of the space as proposed would be carried out as a function of the personal enjoyment of the occupant of the dwellinghouse. In my view, the proposed use of the garage building can be regarded as being subordinate and reasonably connected with the residential use of the appellant's dwelling.

16. Given what I observed on site and the submissions provided by the appellant, I am satisfied that, on the balance of probabilities and as a matter of fact and degree, the proposal would satisfy the test of being genuinely and reasonably required for its specified purpose and would be incidental to the enjoyment of the dwellinghouse as such. Accordingly, the proposal would be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO. The council may have concerns about the future use of the building, but a material change of use of the building would require planning permission and the council may take enforcement action if that eventuality occurred.

Conclusion

17. For the reasons given above I conclude that the council's refusal to grant an LDC in respect of the concrete slab and proposed erection of timber triple bay

[1] APP/P1805/X/18/3202923

single storey garage was not well-founded and that the appeal should succeed. The appeal is allowed, and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

S A Hanson

INSPECTOR

The Planning Inspectorate

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 6 March 2023 the development 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The development is "permitted development" falling within Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015, as amended, for which planning permission is granted by Article 3(1) of that Order.

Signed

S A Hanson
INSPECTOR

Date: 9 January 2024
Reference: APP/R1845/X/23/3321716

First Schedule
Proposed concrete slab and erection of a timber triple bay single storey garage.

Second Schedule
Land at: Fingerpost Cottage, Cleobury Road, Far Forest, Kidderminster DY14 9TA

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 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 use described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any use 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 Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: 9 January 2024

by S A Hanson BA(Hons) BTP MRTPI

Land at: Fingerpost Cottage, Cleobury Road, Far Forest, Kidderminster DY14 9TA

Reference: APP/R1845/X/23/3321716

Scale: Not to scale



The Planning Inspectorate

Appeal Decision

Site Visit made on 9 August 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 18 October 2021

Appeal Ref: APP/M1595/X/20/3263141
The Willows, Kirkham Road, Horndon On The Hill SS17 8QE

- 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 Lewis against the decision of Thurrock Borough Council.
- The application ref 20/00749/CLOPUD, dated 18 June 2020, was refused by notice dated 13 August 2020.
- 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 single storey outbuilding (garage) with pitched roof not exceeding 3.9 metres in height.

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.

Reasons

2. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the developments proposed would, at the date of the applications, be lawful.

3. The Willows is a detached dwelling in a generous plot. There is a detached double garage and other smaller outbuildings and a pool within the rear garden. The decision turns on whether the proposed garage would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO). The Council refused to grant the certificate as it determined that the garage is not required for a purpose incidental to the enjoyment of the dwellinghouse, and that the eaves height would exceed 2.5 metres.

Whether incidental

4. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. It has been established by case law that an incidental purpose should be functionally related to the

primary use, but not part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental will be a matter of fact and degree. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and to determine whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. The size of the building in relation to the dwelling is relevant but not a conclusive factor.

5. The garage would be a large building, providing bays for three vehicles. There is an existing garage building on site, which appears to have been extended and has a larger footprint than is shown on the submitted drawings. The appellant states that it is used for parking.

6. The appellant has explained that the outbuilding is required for the secure storage of his classic car collection. The building is designed for that purpose, with an undivided internal space that the appellant explains meets the Council's dimensions for garage parking, based on the minimum size for a garage space being 3 metres by 7 metres internally. The building has three garage doors to the front with two small windows to the side and a door to the rear which would give access to the rear garden. The Council acknowledges that the design is simplistic as would be expected of a residential garage.

7. The proposed garage would be of a size and design that is reasonably required to fulfil its purpose. While the collection of classic cars is the personal choice of the appellant, an outbuilding required in connection with a hobby is capable of being incidental. Moreover, it is not unusual to have garaging for several vehicles for a property in a large plot in a rural setting. Notwithstanding the footprint of the building in relation to the dwelling and the presence of the existing garage, the proposed building would not be excessive in relation to its purpose. I therefore conclude that the proposed building would be reasonably required for a purpose incidental to the enjoyment of the dwellinghouse.

Eaves height

8. Paragraph E.1 of Schedule 2 Part 1 of the GPDO sets out the limitations to the permitted development right. Under E.1(f) development is not permitted if the height of the eaves of the building would exceed 2.5 metres. Article 2(2) of the GPDO sets out that the height of the building is to be construed as its height when measured from ground level. This means the level of the surface of the ground immediately adjacent to the building, and where the level of the surface of the ground is not uniform, it is the level of the highest part of the surface of the ground adjacent to it.

9. The Permitted Development Technical Guidance[1] provides guidance for Class E buildings on page 43. It refers to the guidance for measuring extensions on page 12. It explains that the eaves height of the building is where the lowest point of a roof slope meets the outside wall of the building, not including any overhang. It is measured from ground level at the base of the outside wall to the point where that wall would meet the upper surface of the roof slope. In this case, the ground gently slopes so that it is slightly higher at the front of

[1] MHCLG September 2019

the proposed building. From my reading of the drawings, I estimate the eaves height at the front of the building would be 2.5 metres, while at the rear it would be 2.6 metres. On this basis, the proposed building would comply with the limitation in paragraph E.1(f).

Conclusion

10. For the reasons set out above, I find that the outbuilding would reasonably be required for a purpose incidental to the enjoyment of the dwellinghouse as such, and would be permitted development under Schedule 2 Part 1 Class E of the GPDO.

11. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of an outbuilding (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 Act as amended.

N Thomas

INSPECTOR

The Planning Inspectorate

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 18 June 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 operation is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas

Inspector

Date 18 October 2021

Reference: APP/M1595/X/20/3263141

First Schedule

Single storey outbuilding (garage) with pitched roof not exceeding 3.9 metres in height

Second Schedule

Land at The Willows, Kirkham Road, Horndon On The Hill SS17 8QE

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, was 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 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.

The Planning Inspectorate

Plan

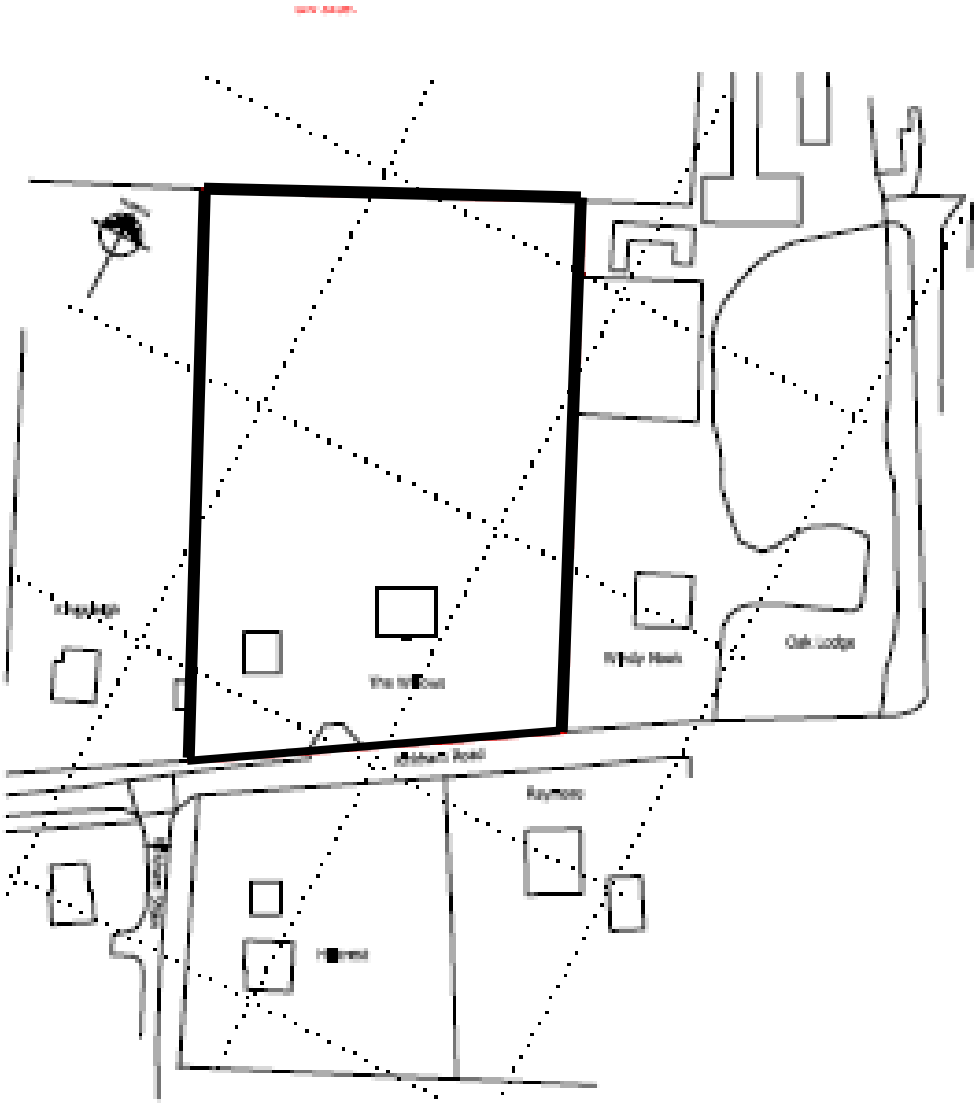
This is the plan referred to in the Lawful Development Certificate dated: 18 October 2021

by N Thomas MA MRTPI

Land at: The Willows, Kirkham Road, Horndon On The Hill SS17 8QE

Reference: APP/M1595/X/20/3263141

Scale: Not to scale



The Planning Inspectorate

Appeal Decision

Site visit made on 12 September 2023

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 30TH OCTOBER 2023

Appeal Ref: APP/T2405/X/23/3320933
New Holme, Stanton Road, Elmesthorpe, Leicestershire LE9 7SH

- 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 and Mrs Hatson against the decision of Blaby District Council.
- The application ref 22/1197/CLP, dated 8 December 2022, was refused by notice dated 3 February 2023.
- 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 development is sought is a new outbuilding to accommodate garaging, storage, workshop, home office and gym.

Decision

1. The appeal is allowed and attached to this decision is a Lawful Development Certificate (LDC) describing the proposed development which is considered to be lawful.

Background and Preliminary Matters

2. The relevant date for determining whether the outbuilding subject of the appeal would be lawful is the date the application was submitted to the Council, which is 8 December 2022. For a LDC to be granted under s192 of the Town and Country Planning Act 1990 it is necessary for the appellants to demonstrate, on the balance of probability, that the development would have been lawful. Matters such as planning policies and the effect of the proposed outbuilding on the character and appearance of the area are not relevant. My determination is made solely on matters of fact, planning law, and application of judicial authority.

3. The appeal site has been subject to planning history that is relevant to the determination of the LDC. Namely, an application for the residential use of land to the rear of New Holme was refused but allowed on appeal in November 2020[1]. The land was formally an agricultural field, but the Inspector determined that since 1995 the land where the outbuilding has been proposed had been used for a purpose incidental to the enjoyment of the dwellinghouse. Also, the Inspector concluded that as a matter of fact and degree, and based on the evidence before her, the land can be treated as being within the curtilage of the dwellinghouse.

4. The appellants have submitted a site location plan, site block plan as well as detailed floor and elevation plans of the outbuilding. The plans show the proposed outbuilding as being approximately 20.5 metres(m) in length x 9.5m wide, and 2.5m and 4m in height to the eaves and ridge respectively. It is

[1] Appeal reference APP/T2405/X/19/3232820

located centrally in the extended garden away from the house. Internally the building is shown to have a garage, workshop, mower and trailer storage, home office, gym and hobby room. There are also three statutory declarations from the appellants and their daughter setting out the appellants' requirements in respect of the use and accommodation of the outbuilding.

5. The Site Block Plan reference H08 (90) 02 provides a 1:500 scale plan of the land, host dwelling, immediate streets, and neighbouring properties. It shows the proposed outbuilding location and its footprint, together with an access point from Burbage Common Road. The plan also shows what appears to be a hardstanding from the access and around part of the outbuilding. Despite what it appears like, there is no annotation to indicate that this area is an area of hardstanding or that it forms part of the development proposed.

6. For the avoidance of doubt, the hardstanding area described above has been highlighted in blue on the attached plan to the Decision. As a hardstanding would be operational development that is not described on the Application Form, it has not been considered as part of the assessment of the LDC. The LDC appeal relates to the outbuilding only, and it is indicated in the 'Notes' section of the LDC that any operation, such as a hardstanding that is materially different from that described, could be a breach of planning control which is liable to enforcement action by the Council.

Main Issue

7. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

8. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for classes of development listed in Schedule 2. Subject to several limitations, Class E(a), Part 1, Schedule 2 includes the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of that dwellinghouse. It is clear from the Council's reason for refusal and associated documentation that there is no disagreement between the parties that the limitations (E.1 to E.3) to Class E(a) are not breached, and I come to the same conclusion.

9. The single point of dispute between the parties, and upon which the main issue turns, is whether the size and location of the proposed outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse.

10. The appellants contend that the proposed uses would be incidental to the enjoyment of the dwellinghouse. The Council accept that an outbuilding containing the uses proposed could be considered incidental to the enjoyment of a dwellinghouse in principle. However, their concerns are in respect of the scale of the outbuilding and its location away from the main house. Their Statement of Case specifically identifies the footprint of the proposed outbuilding being greater than the footprint of the main house and, thus, would not be commensurate to it in terms of size and scale.

11. There is no definition of 'incidental' in the GPDO, but the Technical Guidance for Householder Development[2] advises that a purpose incidental to a dwellinghouse 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.

12. Both parties refer to the judgment in *Emin v SSE and Mid-Sussex District Council [1989] 58 P & CR 416*, which I agree is directly relevant to this appeal. It establishes that the term incidental was held to connote an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. For the purposes of applying Class E the term 'required' should be interpreted as 'reasonably required' rather than the 'unrestrained whim' of the occupier. Also, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration although not conclusive by itself.

13. The three statutory declarations from the appellants set out in detail the space requirements in respect of the home office, garaging for the resident's vehicles and workshop related uses, space for gym equipment as well as the storage space for a ride on mower and trailers required for the maintenance of the large garden. As indicated previously, the Council has outlined that the uses could be incidental to the main use of the dwelling house, and I do not disagree. The uses are not primary accommodation and the appellants have provided detailed evidence to demonstrate that the size of the outbuilding is reasonably required for the incidental uses set out. In this respect, the outbuilding would be subordinate to the dwellinghouse in land use terms and the size is reasonably required.

14. When the incidental uses are combined into one building, I acknowledge that the outbuilding is large. However, there is no limit to the size of the outbuilding when compared to the host dwelling in the GPDO. Furthermore, there is no information in the case law highlighted that suggests a building cannot be incidental when the footprint is greater in size than the host dwelling. Class E of the GDPO does not seek to control the position of outbuildings within the curtilage.

15. The physical size is of some relevance, but that should not be the only consideration, and is most relevant when considering the scale and nature of the activities proposed in the outbuilding. For example, if the outbuilding is larger than the dwelling but is only proposed for storage of a single car, then it could be concluded that the size is based on unrestrained whim of the appellants rather than what is reasonably required for the incidental use. The appellants, however, have clearly detailed why the size of the outbuilding is reasonably required when considering how it will be used.

16. Accordingly, I accept that the proposed building is large, but it complies with the limitations set out in E.1 to E.3 of Class E(a) as well as being subordinate to the dwelling in land use terms. I have taken account of the Council's concerns over the size and location relative to the host dwelling but based on the detailed evidence submitted with the appeal, I am satisfied that the use of the outbuilding is incidental to the enjoyment of the dwellinghouse, and the size is reasonably

[2] Permitted development rights for householders Technical Guidance, DCLG (2019)

required. Consequently, the proposed outbuilding would be lawful and falls within Schedule 2, Part 1, Class E of the GPDO.

Other Matters

17. The Council has referred to previous appeal decisions[3]. However, I do not have the full details of these cases, so it is difficult to directly compare. In this respect it is likely that the proposed developments, circumstances, and other physical factors in those cases are not the same as the appeal before me. I have therefore taken them into account in so far as they provide useful background information, but each case must be individually judged on a fact and degree basis in the light of the particular circumstances. That is the approach I have taken here.

Conclusion

18. For the reasons given above, I conclude on the evidence available that the Council's refusal to grant a certificate of lawful development in respect of a new outbuilding to accommodate garaging, storage, workshop, home office and gym at New Holme, Stanton Road, Elmesthorpe, Leicestershire LE9 7SH was not well-founded. The appeal should succeed and I, accordingly, exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

M. P. Howell

INSPECTOR

[3] Appeal references: APP/G5750/X/19/3238377, APP/Y3615/X/20/3244438, APP/T2405/X/21/3266587

The Planning Inspectorate

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 8 December 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 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed development would have benefitted from deemed planning permission pursuant to Article 3 of, and Class E(a) of Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

M. P. Howell

Inspector

Date **30th OCTOBER 2023**

Reference: APP/T2405/X/23/3320933

First Schedule

A new outbuilding to accommodate garaging, storage, workshop, home office and gym.

Second Schedule

Land at New Holme, Stanton Road, Elmesthorpe, Leicestershire LE9 7SH

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 operation which is materially different from that described, such as the possible hardstanding highlighted in blue, or which relates to any other land, may result in a breach of planning control which is liable to enforcement action by the Council.

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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **30th OCTOBER 2023**

by M. P. Howell Dip TP MRTPI

Land at: New Holme, Stanton Road, Elmesthorpe, Leicestershire LE9 7SH

Reference: APP/T2405/X/23/3320933

Do not Scale


15.000
31.000
23.000
26.000
Proposed Class E Outbuilding
BURBAGE COMMON ROAD
STANTON ROAD
B581
Grosnont
The Elms
Ivanhoe
Lynhurst
Green-Leys
New Holme
Bennetts
9
3
4
2
7
1

The Planning Inspectorate

Appeal Decision

Site visit made on 16 July 2024

by M. P. Howell BA (Hons) Dip TP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19TH AUGUST 2024

Appeal Ref: APP/W0340/X/23/3321289
Field View, Kiff Green, Upper Woolhampton, West Berkshire, Reading RG7 5TN

- 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 Steve Collins against the decision of West Berkshire District Council.
- The application ref 23/00423/CERTP, dated 21 February 2023, was refused by notice dated 19 April 2023.
- The application was made under section 192(1)(a) 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 construction of a detached double garage with space for storage of tools and garden machinery.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the construction of a detached double garage with space for storage of tools and garden machinery, which is found to be lawful.

Applications for costs

2. An application for costs was made by Mr Steve Collins against the West Berkshire District Council's decision to refuse the Lawful Development Certificate (LDC). This application is the subject of a separate decision.

Preliminary Matters

3. This current LDC application included an Application Form, a Location Plan (drawing reference 2023-01/FV01/LP1); a Block Plan (drawing reference 2023-01/FV01/BP1) as well as a Floor and Elevations Plan (drawing reference 2023-01/FV01/EV1). As part of the appeal submissions the appellant provided additional evidence in the form of a Supporting Rationale and Evidence Statement with Appendices A to D. They include Appendix A- table of garden sizes in the locality, Appendix B- chart outlining compliance of proposed development with Class E of the Town and Country (General Permitted Development) Order 2015 (as Amended); Appendix C and D- Curtilage Principals and Assessment respectively.

4. Both parties have discussed the planning history as part of the appeal, specifically, a recent section 191 LDC application relevant to the determination of this appeal. The previous LDC application sought a certificate for the existing residential use of land to the side and rear of Field View, incidental to the dwellinghouse. The LDC

application was refused by the Council but later allowed on appeal[1]. I will hereafter refer to it as the '2022 appeal.'

5. The relevant test is the balance of probability, not the more onerous test of beyond reasonable doubt. The onus rests with the appellant to provide sufficient information to demonstrate this to be the case. The Planning Practice Guidance (PPG) states that if the Council has no evidence itself, nor any from others, to contradict or otherwise make the applicant's version of events less than probable there is no good reason to refuse the application, provided the applicant's evidence alone is sufficiently precise and unambiguous[2].

Main Issue

6. The main issue is whether the Council's decision to refuse to grant an LDC was well founded.

Reasons

7. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) grants planning permission for classes of development listed in Schedule 2. Subject to several limitations, Class E(a), Part 1, Schedule 2 includes the provision within the curtilage of a dwellinghouse of a building required for a purpose incidental to the enjoyment of that dwellinghouse.

8. The main area of contention between the parties is whether the proposed building would be located in the curtilage of the dwellinghouse. It is correctly set out in the submissions that curtilage is not a use of land. However, to benefit from express permission via Class E, Part 1, Schedule 2 of the GPDO, the land upon which the building would be constructed must be within the curtilage of the dwellinghouse at the time the application was submitted. Whether the land where the building is proposed can be regarded as being within the curtilage of a dwellinghouse is a matter of fact and degree.

9. The appellant has indicated that the Council describes 'curtilage' within their own policy documents as *'The defined residential boundary of a dwelling, normally (but not necessarily) the domestic garden area'* and *'The area of land around a property, e.g. gardens, grounds.'* I have not been provided with a copy of the policy documents being referred to by the appellant, however, the Ministry of Housing Communities and Local Government (MHCLG) Technical Guidance for Householder Development provides some assistance in respect of the term. At page 7 it states:

> *"Curtilage" – is land which forms part and parcel with the house. Usually it is the area of land within which the house sits, or to which it is attached, such as the garden, but for some houses, especially in the case of properties with large grounds, it may be a smaller area.*

10. Curtilage of a building must, therefore, be land that is part and parcel with the dwelling and intimately associated with the building. There is also established caselaw that has had regard to the issue of curtilage, some of which has been highlighted by the appellant and Council. For instance, *Sinclair-Lockhart's Trustees*[3] established that land may be regarded as being within the curtilage of a

[1] Council Reference No. 21/02873/CERTE and Appeal reference APP/W0340/X/22/3290914
[2] Paragraph: 006 Reference ID: 17c-006-20140306
[3] *Sinclair-Lockhart's Trustees v Central Land Board (1950) 1 P&CR 195*

building if it serves the purpose of the house or building in some necessary or reasonably useful way. *Methuan-Campbell*[4] determined that, to be curtilage, land must be associated with [the building] as to lead to the conclusion that the former in truth forms part and parcel of the latter. The relative size of the building and its curtilage, whether the building or land would be ancillary to the main building (*Skerritts*[5]) and the degree to which the building and claimed curtilage fall within one enclosure (*Sumpton*[6]).

11. While concerning a listed building, but equally applicable to any building, *Calderdale*[7] sets out three important factors that must be considered and are important to my consideration of the matter (i) The physical layout of the building and land; (ii) Their ownership, past and present; and (iii) Their function, past and present. The factors set out are relevant considerations, but they are not determinative on their own.

Physical Layout of the Building and Land

12. The appellant proposes a detached garage building on an area of land to the side of the dwellinghouse. It would be located a few metres further east than the existing shed, just beyond a gravelled parking and turning area. The appellant's Supporting Rationale and Evidence Statement claims that the garden is fully enclosed by hedges and fencing, and there are now no physical traces of the previous boundary between the areas that would have formed the original curtilage and the extended area approved in the 2022 appeal.

13. From what I saw on site, the front boundary is delineated by a hedgerow followed by a line of mature trees and a low lying chestnut paling fencing. The fencing and vegetation extend from east to west where it meets an access track to a field. The fencing then extends north to south, which together with trees and vegetation, forms an eastern boundary. At the back of the site there is a mix of hedgerow, vegetation and trees separating the site from the field behind. A hedgerow forms a boundary between the land and adjoining neighbour to the west. These boundaries enclose the land within the site edged red identified on the location plan.

14. However, within the site I do not agree that there are no physical traces of previous boundaries between the original and extended area. To the side of the dwelling, between the large shed and an electricity pylon, there is a flat, well maintained lawned garden that is enclosed by a fairly distinct line of mature trees. These trees are inside of the eastern boundary line of the extended land described above. The trees form a line from the front boundary, which extends to the south and curves around the back of the existing outbuildings. Towards the rear, the line of trees extends to the rear boundary, enclosing a lawned garden to the back. Within the tree line described is the dwelling; the side extension; parking area; existing outbuildings; a rotary washing line and a side and rear lawned garden.

15. It is accepted that there are several gaps in the tree line, allowing access to the extended land, which includes items such as a picnic table; a vegetable patch; a well and tap (in use) and benches. Also some chain link fencing and a mature hedgerow described in the 2022 appeal decision[8] have now been removed. However, in terms of the physical layout of the building and land together with

[4] *Methuan-Campbell v Walters [1979] 1 QB 525*
[5] *Skerritts of Nottingham Ltd v SSETR [2001] QB 59*
[6] Sumpton v London Borough of Greenwich [2007] EWHC 2776 (Admin)
[7] *Attorney General, ex r Sutcliffe v Calderdale Borough Council (1983) 46 P&CR 399*
[8] paragraph 12

enclosures, I am of the view that the land within the tree line is within a single enclosure and appears as part and parcel of the dwelling as well as intimately associated with the building.

Ownership

16. The appellant states that they purchased the property of Field View in 1985, and the additional land to the side and rear in 2001. Although a land registry document and plan has not been provided with the application or appeal, the Council has not provided any evidence to the contrary. I have no reason to doubt that the plan with the LDC identifies the area of land that has been owned and occupied by the appellants since 2001.

17. As such, based on the evidence before me, the dwellinghouse at Field View, and the surrounding land identified by the site edged red has been in single ownership, by the appellant, since at least 2001. This is, of course, some considerable period of time.

Use or Function

18. I recognise that there is not a significant amount of evidence submitted with the LDC application or the subsequent appeal submissions, which sets out in detail the specific use and function of the land where the garage is proposed.

19. Nonetheless, the 2022 appeal is particularly relevant as it considered whether the land surrounding Field View, within the appellant's ownership, had been used for residential activities incidental to the dwellinghouse. The 2022 appeal is a recent decision and determined that all of the land to the side and rear within the appellant's ownership has been used incidentally to the residential use of the dwelling since at least 2001. The appellant has not indicated that the use or function of the land has changed since the 2022 appeal, and the Council has not provided any evidence to the contrary.

20. As such, with specific regard to the area to the east of the dwellinghouse, where the garage building is proposed, I have no reason to doubt that the appellants have used this land as garden incidental to the dwelling since the purchase of the property. As such, the land has been used for some significant time for this use or function.

Summary on Curtilage

21. I have viewed the layout of the building and land around it differently to the appellant. I do not consider that the curtilage of the property extends to the entirety of the land owned by the appellant. However, the land where the garage building is proposed is within the boundary of trees I have described, close to the dwellinghouse and its outbuildings. The land is within the same, single ownership and has a use or function that is incidental to the residential dwellinghouse. Accordingly, I find that the land where the garage building is proposed is intimately associated with the dwelling, and the former in truth forms part and parcel of the latter. Based on a matter of fact and degree, the garage building is proposed on land that is within the curtilage of the dwellinghouse.

22. I have had regard to the previous Inspector's comments on the curtilage. However, in my judgement, the previous Inspector's decision focussed on whether the land (subject of that appeal) was being used incidentally to the residential use of the property over a 10 year period. His observations on curtilage related to the

entirety of the land in question and would not have been determinative on the decision he was making. As such, although I have had regard to the 2022 appeal, the approach I have taken in this instance is correct, it is consistent with established caselaw as well as the MHCLG technical guidance regarding the curtilage of properties with large grounds.

Compliance with Class E of the GPDO

23. The Council has not provided comment on whether the proposed building would be compliant with the remaining requirements and limitations set out in E.1 to E.3 to Class E(a) of the GPDO. However, as I have determined that the proposed building would have been within the curtilage of Field View at the time of the application, I must have regard to the remaining requirements and limitations of Class E(a) of the GPDO.

24. Based on the evidence before me, the proposed building is compliant with the limitations set out within E.1 to E.3. The proposed building is not within any of the protected areas outlined; it would not be forward of the principal elevation; it does not include a raised platform; it is single storey, and the eaves and roof heights would not exceed the maximum heights permitted. The building and other buildings within the curtilage would also not exceed 50% of the area.

25. There is no definition of 'incidental' in the GPDO, but the MHCLG Technical Guidance for Householder Development advises that a purpose incidental to a dwellinghouse 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[9].

26. The building is proposed as a double garage and for the storage of tools and machinery in connection with the residential use of the land. The use of the building as a garage for the purposes set out does not, therefore, include primary accommodation and would be considered an incidental use to the dwellinghouse. Furthermore, the size of the proposed building is not excessive for its purpose and would be reasonably required for the incidental uses set out.

Conclusion

27. I have taken into account the Council's concerns over the location of the proposed building. However, based on the evidence before me, I am satisfied that the proposed building would have been located on land that is within the curtilage of Field View. Consequently, it would have been compliant with the requirements and limitations set out in Schedule 2, Part 1, Class E of the GPDO.

28. Accordingly, on the evidence now available to me, the Council's refusal to grant an LDC in respect of the proposed detached double garage with space for storage of tools and garden machinery 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).

M. P. Howell

INSPECTOR

[9] Permitted development rights for householders Technical Guidance, DCLG (2019)

The Planning Inspectorate

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 21 February 2023 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(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed construction of a detached double garage with space for storage of tools and garden machinery would have benefitted from deemed planning permission pursuant to Article 3 of, and Class E(a) of Part 1 of Schedule 2 to, the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

M. P. Howell
Inspector

Date: **19TH AUGUST 2024**
Reference: APP/W0340/X/23/3321289

First Schedule

The construction of a detached double garage with space for storage of tools and garden machinery.

Second Schedule

Field View, Kiff Green, Upper Woolhampton, West Berkshire, Reading RG7 5TN

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 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.

The Planning Inspectorate

Plan

This is the plan referred to in the Lawful Development Certificate dated: **19TH AUGUST 2024**

by M. P. Howell BA (Hons) Dip TP MRTPI

Land at: Field View Kiff Green, Upper Woolhampton, West Berkshire, READING RG7 5TN

Reference: APP/W0340/X/23/3321289

Scale: Not to Scale

