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# Appeal Decision

Site visit made on 24 May 2021

**by M Savage BSc (Hons) MCD MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 23 June 2021**

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**Appeal Ref: APP/G4240/X/21/3267937**

**1 Mount Pleasant, Barmhouse Lane, Hyde SK14 3BX**

- 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 Andrew Hayes against the decision of Tameside Metropolitan Borough Council.
  - The application Ref 20/00670/CPUD, dated 23 July 2020, was refused by notice dated 12 October 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 erection of a single level building to accommodate an office and 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 operations which are considered to be lawful.

## Main Issue

2. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class E(a) Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

## Reasons

3. An application under S192(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether (a) any proposed use of buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful. S192(2) sets out that if on application under this 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.
4. Case law has established that consideration of the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder. The test is whether the proposed

- building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
5. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse. The word 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house.
  6. The proposed building would comprise space for three cars and a separate garden store/office. The Council suggest that the proposed outbuilding would be approximately 57 square metres (sqm) whereas the appellant states it would have a floor area of 46sqm. From the evidence before me, the difference appears to depend upon whether the internal or external floor area is considered. Whichever value is taken, the floor area of the proposed outbuilding would be much less than that of the existing house. Furthermore, the outbuilding would be single storey and would appear subordinate to the dwellinghouse.
  7. It is not unusual for households to have more than one vehicle and so I do not consider it unreasonable for the garage to accommodate up to three vehicles. The parking of vehicles by users of the dwelling would, in my view, be incidental to the enjoyment of the dwellinghouse.
  8. The garden store/office would be modest in size and could reasonably be used to accommodate garden equipment such as a lawnmower and other garden tools, or office equipment. Both such uses would also, in my view, be incidental to the enjoyment of the dwellinghouse.
  9. Although there are other outbuildings within the appeal site, the total area of ground covered by buildings, enclosures and containers within the curtilage, other than the original dwellinghouse, would not exceed 50% of the total area of the curtilage. Consequently, whether or not the other outbuildings within the appeal site are demolished, criterion E.1(b) of the GPDO would be complied with.
  10. Thus, for the reasons given above, I find on the balance of probabilities that the proposed single level building to accommodate an office and a garage would be development which is permitted by the GPDO.

### **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 the erection of a single level building to accommodate an office and 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.

*M Savage*

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

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**IT IS HEREBY CERTIFIED** that on 23 July 2020 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 operations would constitute permitted development within the terms of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

*M Savage*

Inspector

Date 23 June 2021

Reference: APP/G4240/X/21/3267937

### **First Schedule**

The erection of a single level building to accommodate an office and garage in accordance with the following drawings: Proposed Plans and Elevations, drawing number F03/DG/11 and Proposed Site Plan, drawing number F03/DG/12.

### **Second Schedule**

Land at 1 Mount Pleasant, Barmhouse Lane, Hyde SK14 3BX

## 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: 23 June 2021

**By M Savage BSc (Hons) MCD MRTPI**

**Land at: 1 Mount Pleasant, Barmhouse Lane, Hyde SK14 3BX**

**Reference: APP/G4240/X/21/3267937**

Scale: Not to scale

