

[Outbuildings for residential accommodation – a planning grey area](#)

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We came across this blog post whilst researching planning laws for outbuildings and it makes very interesting reading. The post by Martin is a reply to a comment on the well known website 'mumsnet' and brings up the subject of planning laws for outbuildings used for residential accommodation. I have decided to publish the article in its entirety as Martin explains far better than I can!

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"The argument is raging around some unwelcome development being carried on by someone's neighbour in their back garden, and they were wondering what if anything they could do about it.

The subject of what development or other works a householder can and cannot carry out on their own property would take a book in itself and, if I can ever find the time to do so, I might well write just such a book. In the meantime, however, and looking at it from the point of view of the concerned neighbour, it may be helpful if I mention some of the constraints on householder developments.

I should stress that I am confining this note to free-standing buildings within the 'curtilage' which are permitted by Class E in Part 1 of the Second Schedule to the General Permitted Development Order (the 'GPDO'), so these remarks do not apply to extensions and alterations of the house itself.

Perhaps the most important constraint on Permitted Development within this Class of Part 1 in the GPDO is the purpose for which the outbuilding is being erected. The wording of the Order is quite restrictive; it only permits the erection of such a building if it is "required for a purpose incidental to the enjoyment of the dwellinghouse as such". The term 'incidental' as used here has been held to exclude purposes which are part of the primary residential use of the property, so a free-standing building to provide extra sleeping accommodation, extra living space, and/or a kitchen, etc. are not permitted by this part of the GPDO.

There is, however, one weakness in this rule. Provided the original purpose of the extra building was purely incidental to the enjoyment of the dwellinghouse, its later use as primary (but not separate) residential accommodation is not prevented. In order to demonstrate that the outbuilding had originally been erected for a strictly incidental purpose, I suggest that it would be necessary to show that it was actually used for that purpose when first built, and for some time thereafter. How long this period would have to be has never been settled, but I suggest that it would need to be for several months at the very least, if not a year or more.

So if a neighbour thinks that any building is being erected for a purpose which is not strictly incidental to the use of the house but is intended for some primary residential purpose, they should draw this to the attention of the local Council's enforcement officer. Whether the Council will do anything about it is another matter, but certainly nothing will happen if they are not alerted to the situation.

The nature of the property or the area in which it is located may also affect the right to build within its 'curtilage'. So, for example, if the house is a Listed Building, there is no right to develop within its curtilage at all. If the house is within a World Heritage Site, a National Park, an Area of Outstanding Natural Beauty, or the Broads (which are all formal planning designations), the development permitted by Class E is limited to no more than 10 square metres in area if it is situated more than 20 metres from any wall of the house. Furthermore, in these areas, and also within a Conservation Area, the development must not be built at the side of the house.

Apart from these specific restrictions, there is a general limit on such development, which prohibits building on more than 50% of the total area of the curtilage (excluding the ground area of the original house), and no part of the building must be positioned forward of the principal elevation of the original house. The building must not have more than one storey, and its height must not exceed 4 metres in the case of a building with a dual-pitched

roof, or 2.5 metres if it is within 2 metres of the boundary of the property. In any other case, the height must not exceed 3 metres, and the height of the eaves of the building (in all cases) must not exceed 2.5 metres.

This note is not intended to be a comprehensive guide to the subject, but was written in order briefly to explain the limitations on the outbuildings which can be built as permitted development under Class E of Part 1.

Anyone can apply for planning permission for larger buildings on their property, but the usual development management criteria would apply in such a case, and neighbours may object if they consider that the proposed development will adversely affect them."

Martin also goes on to say,

"This issue really is a legal anomaly, and is one of the many aspects of planning law which lay people must find confusing, frustrating and even infuriating. It can be a hidden trap for householders, who may not appreciate that there are limits as to the purpose for which a newly constructed outbuilding can be used, although in time that restriction will in fact disappear (subject to the outbuilding not being used as a separate dwelling). Incidentally, there is judicial authority which (by analogy) supports the proposition that the initial use of the building for strictly 'incidental' purposes would have to be more than a merely token use, and would have to continue for some months (it has been suggested possibly for more than a year) before the outbuilding can then be used for primary residential purposes, such as additional sleeping accommodation, etc. On the other hand, I dare say that many people get by simply by obeying the Eleventh Commandment ("Thou shalt not be found out.") – if no-one complains, the planners will never know about it; it is only if you have jealous or resentful neighbours that you may have a problem. The moral is to keep on good terms with your neighbours, and to keep them informed of your intentions and get their agreement or support for what you want to build if at all possible. Trouble is much more likely to arise where neighbours are taken by surprise by development next-door