

Appeal Decision

Site visit made on 12 October 2016

by Paul Dignan MSc PhD

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

Decision date: 28 October 2016

Appeal Ref: APP/T5150/X/16/3152928
169 Anson Road, London NW2 4AS.

- 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 Ian Dodds against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/0616, dated 12 February 2016, was refused by notice dated 15 April 2016.
 - 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 Construction of a Class E Permitted Development Outbuilding.
-

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 considered to be lawful.

Reasons

2. For the avoidance of doubt, I should explain that the planning merits of the proposal are not relevant, and they are not therefore an issue for me to consider, in the context of an appeal under section 195 of the Town and Country Planning Act 1990 as amended, which relates to an application for a lawful development certificate. My decision rests on the facts of the case, and on relevant planning law and judicial authority.
 3. The appeal property is a 5-bedroom house on a relatively large corner plot. Henson Avenue runs alongside the property, and there is a gateway and parking space at the rear of the property with access to Henson Avenue.
 4. The proposed outbuilding would be located at the end of the rear garden, but still visible from the house. It would satisfy all of the dimensional requirements/limitations of Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015 (the GPDO), and would replace an existing timber garden building. It is stated that the building would be used as additional accommodation for the family, including as a gym/studio and for general entertaining and recreation. In the way of facilities it would have a separate WC and what is indicated as a coffee area with sink and work surface.
-

5. The Council considers, first of all, that the proposed building would be too large to be considered as incidental to the enjoyment of the dwellinghouse as such. The case of *Emin v SSE and Mid Sussex DC* [1989] deals with the questions of building size and incidental uses. It was held in that case that whereas the relative sizes of the proposed building and the dwellinghouse might be an important consideration, it is not by itself conclusive. It is necessary to consider whether the use of the proposed building is intended and will remain ancillary or subordinate to the main use of the property as a dwelling house.
6. On this point the Council argues that it is for the appellant to demonstrate that the proposed building is genuinely and reasonably required for domestic incidental uses, and points out that some of the facilities, the WC and elements of a kitchen, are examples of primary living accommodation. The Council also points to the presence of the highway access, which it notes would enable the building to be used independently of the existing dwellinghouse.
7. This latter point seems to me to be at the heart of the Council's concerns. Such a use without planning permission would be a breach of planning control, but whereas the presence in the proposed building of facilities that can be considered as primary living accommodation could facilitate such an unauthorised use, I consider on the balance of probability that that is not the intention here. In coming to this view I have regard to the overall context of the property, including the proposed siting within an established and attractive garden. The doorways to the building are orientated to the garden area, and the layout is indicative of a building that would be intimately linked with, and specifically designed to take advantage of, the garden area. In my view it would have far more of the attributes of a building designed to enhance the enjoyment of the dwellinghouse as such than as one intended for separate residential use.
8. Whilst I appreciate that the Council must closely scrutinise applications for buildings such as this, in this case I am satisfied on the evidence before me, including my site visit, that the proposed outbuilding is genuinely and reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such, and that it is not unduly large for those purposes, having regard to the size of the property.
1. Accordingly, having regard to all other matters raised, I conclude that the proposed outbuilding would be development permitted under Class E of the GPDO. It follows that the Council's refusal to issue an LDC was not well founded. The appeal succeeds accordingly and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Paul Dignan

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by Section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 12 February 2016 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse at 106 Anson Road. In this and all other respects the proposed development meets the requirements for development permitted by Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015.

Signed

Paul Dignan

Inspector

Date

Reference: APP/T5150/X/16/3152928

First Schedule

Construction of an outbuilding.

Second Schedule

169 Anson Road, London NW2 4AS

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, would not have been 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.

Plan

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

by Paul Dignan MSc PhD

Land at: 169 Anson Road, London NW2 4AS.

Reference: APP/T5150/X/16/3152928

