
Appeal Decision

Site visit made on 15 February 2017

by Simon N Hand MA

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

Decision date: 9 March 2017

Appeal Ref: APP/T5150/X/16/3160435
97 Ballogie Avenue, London, NW10 1SU

- 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 & Mrs James and Lorraine Grady against the decision of the Council of the London Borough of Brent.
 - The application Ref 16/2427, dated 6 June 2016, was refused by notice dated 3 August 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 the demolition of existing outbuilding and erection of new outbuilding ancillary to existing dwellinghouse.
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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 operation which is considered to be lawful.

Application for costs

2. An application for costs was made by the appellant against the Council. This application is the subject of a separate Decision.

Reasons

3. The proposed garden building would occupy the rear garden of No 97. It clearly falls to be measured against Class E of Part 1 Schedule 2 of the General Permitted Development (England) Order 2015. The only issue between the appellant and the Council is whether the proposed building would be incidental to the enjoyment of the dwellinghouse. Class E grants permitted development rights for only for buildings that meet the definition of the Class. E(a) is for *"any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure"*. The Council are correct therefore that the building should be genuinely incidental or it would not fall within Class E, regardless of whether it met the limitations described in E.1, 2 and 3.
4. Ordinarily a building that met the limitations of Class E would be considered incidental without any further comment, but in the Borough of Brent there is a

well-known issue with garden buildings actually being used for residential purposes. In this case the Council were given pause for thought due to the unusual shape and configuration of the proposed structure. The appellant has purchased part of the rear garden of a house behind his own and the garden building would extend into and fill this purchased section. However, this section is not directly behind the appellant's own garden, but is offset, which creates an unusual dog-legged structure. Furthermore, there is a track running down the side of the neighbouring dwelling in Ballogie Avenue which gives access to a number of garages and a turning area directly next to the newly purchased piece of garden. The structure would consist of 3 rooms a 'garden room' at the front facing the house and behind it, on the purchased land a 'study' and a 'shed'. The shed would have a direct access into the turning area by the garages, but could also be reached through the 'garden room', as would be the 'study'.

5. The appellant provided no information as to what use the structure would be put, other than the labels on the plan. Given its size, unusual shape and possibility of direct access to the lane the Council required reassurance it was genuinely going to be used for incidental purposes. It would be difficult and inconvenient to use the 'shed' to store garden equipment for the main house for example and what would the 'study' be used for? At appeal stage the appellant provided a detailed explanation. The 'study' would be used by his wife who works from home for an online research company. The 'shed' is for storage and for the appellants motorbike (which I saw in the existing shed on my site visit), and to temporarily store tools and equipment from the appellant's work van overnight to deter thieves, hence the direct access to the lane would be useful. The 'garden room' would be used as its names suggest, hence its location facing up the garden.
6. Having seen the site, the excessively full existing shed and the explanation for the proposed use, in my view the proposed building, on the balance of probability, would be incidental to the enjoyment of the dwellinghouse at No 97 and I shall issue the lawful development certificate as applied for.

Simon Hand

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

IT IS HEREBY CERTIFIED that on 6 June 2016 operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and clearly outlined 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 construction of the proposed outbuilding would be within the limits of the Class E of Part 1, Schedule 2 of the General Permitted Development (England) Order 2015, and the proposed use of the outbuilding would be incidental to the enjoyment of the dwellinghouse at No 97 Ballogie Avenue.

Signed

Simon Hand

Inspector

Date: 9 March 2017

Reference: APP/T5150/X/16/3160435

First Schedule

Demolition of existing outbuilding and erection of new outbuilding ancillary to existing dwellinghouse in accordance with the plan 16016/01 Rev A, dated 6/06/2016

Second Schedule

Land at 97 Ballogie Avenue, London, NW10 1SU



Plan

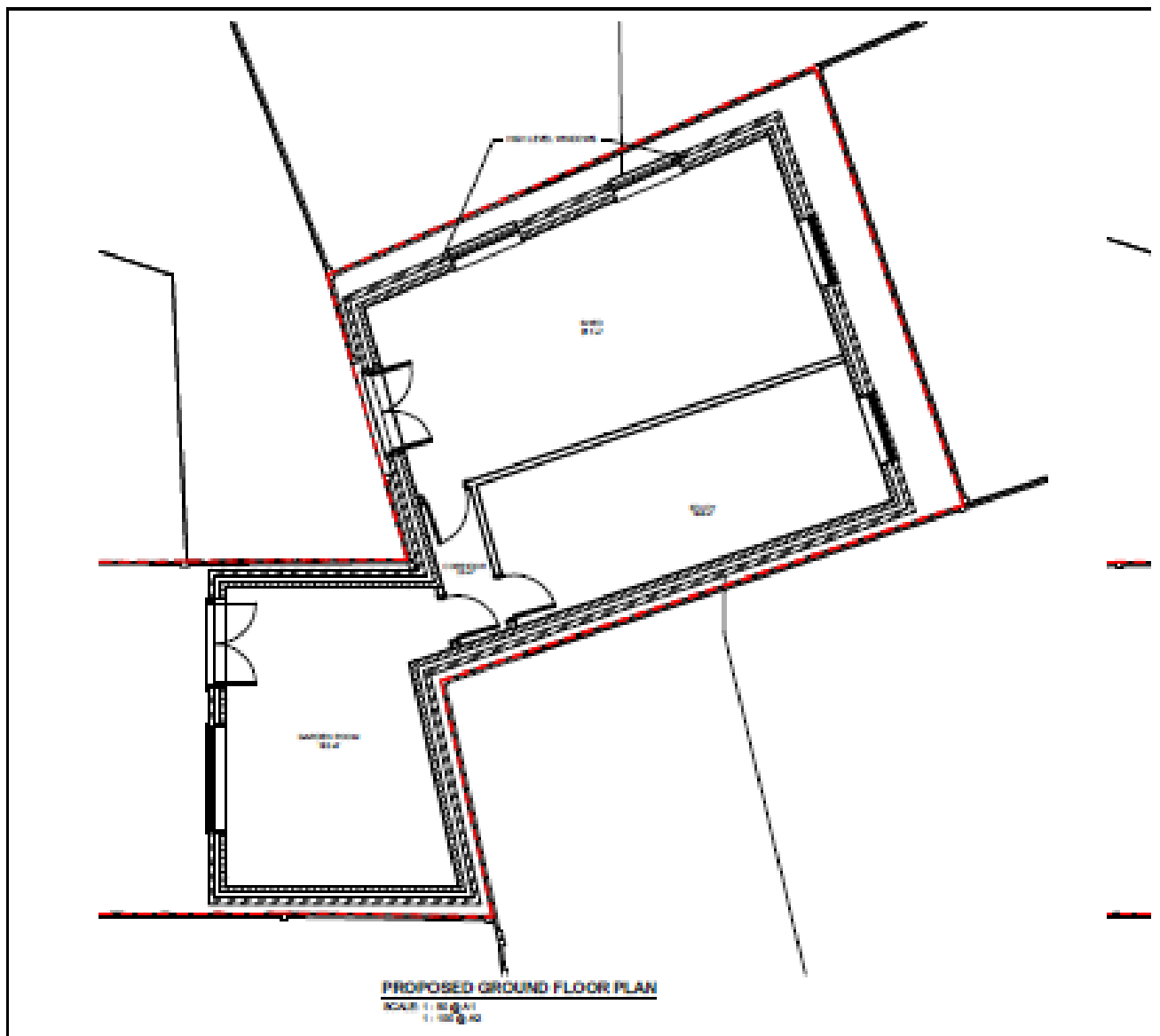
This is the plan referred to in the Lawful Development Certificate dated: 9 March 2017

by **Simon Hand MA**

Land at: 97 Ballogie Avenue, London, NW10 1SU

Reference: APP/T5150/X/16/3160435

Scale: not to scale



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.