
Appeal Decisions

Site visit made on 30 September 2019

by B M Campbell BA(Hons) MRTPI

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

Decision date: 25th November 2019

Appeal A: APP/G5180/X/18/3218922 **59 Hayes Way, Beckenham BR3 6RR**

- 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 Ms L Lombardo against the decision of the Council of the London Borough of Bromley.
 - The application Ref: DC/18/04698/PLUD, dated 2 October 2018, was refused by notice dated 12 December 2018.
 - 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 erection of a single storey outbuilding within the rear garden to be used for purposes incidental to the enjoyment of the existing dwelling.
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Appeal B: APP/G5180/X/19/3231517 **59 Hayes Way, Beckenham BR3 6RR**

- 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 Ms L Lombardo against the decision of the Council of the London Borough of Bromley.
 - The application Ref: DC/19/01573/PLUD, dated 15 March 2019, was refused by notice dated 10 June 2019.
 - 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 erection of a single storey outbuilding within the rear garden to be used for purposes incidental to the enjoyment of the existing dwelling.
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Formal Decisions

Appeal A: APP/G5180/X/18/3218922

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.

Appeal B: APP/G5180/X/19/3231517

2. 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

3. The appeal property comprises a detached, formerly two storey, house which has recently been substantially extended. Permission for the extension was won on appeal where the Inspector noted that the proposal would more than double the size of the house. It was also to be provided with rooms in the roof.
4. The proposed outbuilding the subject of Appeal A would have a floor area of some 93sqm (Council's calculation). Following the refusal to issue an LDC in respect of that application, a further application was made for a smaller building of some 78sqm (Council's calculation) but that too was refused and is now the subject of Appeal B. Both buildings would be located at the end of the long rear garden. They are each of a similar design comprising a single storey finished in painted render beneath a pitched tiled roof. Only one or other could be built.
5. In the case of both proposals, operational development within the meaning of Section 55 of the Act is involved for which planning permission is required. Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) grants planning permission for classes of development described as permitted development in Schedule 2. Part 1 of Schedule 2 addresses development within the curtilage of a dwellinghouse and Class E of Part 1 includes as permitted development the provision of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. It is the Appellant's case that each proposal falls within Class E and thus permission is granted by way of Article 3.
6. Class E is subject to a number of limitations, for example in relation to the height of the building, but there is no dispute that both proposals meet all the relevant limitations. The single issue between the parties is whether either building can be said to be "required" for incidental purposes.
7. Looking first at the term "incidental", this would normally exclude primary living accommodation such as bedrooms, living room or a kitchen: in other words, uses which are integral to the dwellinghouse use. In this instance the activities identified for the building the subject of Appeal A are recreational in nature – a snooker room and gym area with a small associated shower room. And for the building the subject of Appeal B, a home office area has been added together with some seating. It is not unusual for games rooms, exercise rooms and home offices to be housed in garden outbuildings and those uses, rather than being essential components of primary living accommodation, can be identified as additional, incidental uses.
8. Turning then to whether the building in either appeal is "required" for the incidental purposes; it is widely accepted that the appropriate test is whether the building is "reasonably required" for the stated purposes. Looking first at size in relation to the host building; following substantial extension, the main dwelling now comprises a very large detached house capable of accommodating a large family. Either of the buildings proposed, situated at the end of the long rear garden, would not appear unduly large when seen together with the main dwelling and would, in my view, appear as a subordinate part of the planning unit. Whilst size is not, of itself determinative, the nature and scale of the nominated activities to be carried out in the buildings are necessarily controlled to a degree by the space available.

9. In this instance, I find the stated activities as a snooker room and gym in Appeal A and with the addition of a home office in Appeal B, when considered in the context of the entire planning unit, would remain ancillary and subordinate to the main use of the property as a dwellinghouse. They would not be carried out at such a scale within the proposed buildings so as to depart from their purpose as activities incidental to the enjoyment of the dwellinghouse.
10. The Council's concern appears to be with the size of the proposed buildings and whether the whole is necessary for the intended uses. This, they find especially so for Appeal A where criticism is made of "unused space". In my view, however, where the uses for the areas are identified, it is not necessary to demonstrate in detail how the whole floor area is to be used right down to the positioning of each item of gym equipment, albeit that some indication might be of assistance. The wording of Class E of Part 1 of Schedule 2 to the GPDO does not limit floorspace to the minimum necessary to accommodate the proposed activities nor does it allow only that which is shown to be essential. The proposed uses for the building are identified and as a matter of fact and degree I find that the scale of those uses undertaken in either of the proposed buildings would not be such that they would lose their incidental relationship to the main dwellinghouse. In my judgement they have been shown to be reasonably required. In the case of both appeals, therefore, I find the wording of Class E that the building be "required for a purpose incidental to the enjoyment of the dwellinghouse as such" to be satisfied.
11. I note the concern expressed by the Park Langley Residents' Association about possible future use as a dwelling and I can understand such concern having regard to the design of the building and its location. However, that is not what is proposed, and I am constrained by the terms of the application made. It is up to the Appellant what the development is that he wishes to apply for an LDC for. If it was later found that the proposal was a sham and the building constructed was never intended for an incidental use but for a primary residential use (or indeed use as a separate dwelling) then it would be up to the Council to decide whether it would be expedient to take enforcement action, since in such circumstances there would have been no genuine compliance with Class E and thus the development would not have been permitted development.
12. Be that as it may, for the reasons given above I conclude, on the evidence now available, that the Council's refusals to grant certificates of lawful use or development in respect of the erection of single storey outbuildings within the rear garden to be used for purposes incidental to the enjoyment of the existing dwelling at 59 Hayes Way, Beckenham BR3 6RR were not well-founded and that the appeals should succeed. I exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

B M Campbell

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 2 October 2018 the operation 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 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 for which planning permission is granted by Article 3(1) of that Order.

Signed

B M Campbell
Inspector

Date

Reference: **Appeal A: APP/G5180/X/18/3218922**

First Schedule

The erection of a single storey outbuilding within the rear garden to be used for purposes incidental to the enjoyment of the existing dwelling (as shown on drawing number AR/07 Rev B)

Second Schedule

Land at 59 Hayes Way, Beckenham BR3 6RR

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 operation 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 not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operation 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 B M Campbell BA(Hons) MRTPI

Land at 59 Hayes Way, Beckenham BR3 6RR

Appeal A: APP/G5180/X/18/3218922

Not to scale:



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 15 March 2019 the operation 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 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 for which planning permission is granted by Article 3(1) of that Order.

Signed

B M Campbell

Inspector

Date

Reference: **Appeal B: APP/G5180/X/19/3231517**

First Schedule

The erection of a single storey outbuilding within the rear garden to be used for purposes incidental to the enjoyment of the existing dwelling (as shown on drawing number AR/07 Rev E)

Second Schedule

Land at 59 Hayes Way, Beckenham BR3 6RR

NOTES

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