



Appeal Decision

Site visit made on 4 November 2019

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date: 28 November 2019

Appeal Ref: APP/Q5300/X/18/3218125

16 Doveridge Gardens, Southgate N13 5BL

- 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 Parvish Ghora against the decision of the Council of the London Borough of Enfield.
 - The application Ref 18/03578/CEA, dated 17 September 2018, was refused by notice dated 3 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 a detached outbuilding for use as gym.
-

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.

Preliminary Matters

2. The header above correctly quotes the description of the proposed development set out on the application form. The decision notice issued by the Council revises the description, but that can only be done with the appellant's agreement where a lawful development certificate (LDC) is sought for proposed development under s192 of the Town and Country Planning Act 1990 as amended (1990 Act). It is plain that the appellant does not agree and I shall therefore consider this appeal as simply for a detached outbuilding for use as a gym.
3. The appeal concerns a semi-detached dwelling with an existing single storey extension to the rear. The proposed building would span the entire width of the property but be separated from its existing rear elevation by some 7cm.
4. The appellant has previously submitted two applications for an additional single storey extension. These were refused for reasons related to adverse impacts on the living conditions of neighbours. However, planning merits are irrelevant to the issue of lawfulness in an LDC application.

Main Issue

5. The main issue is whether the proposed outbuilding would be granted planning permission by Article 3 and Schedule 2, Part 1 of the Town and Country

Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).

Reasons

6. The appellant considers that the proposed building is permitted development (PD) under Part 1, Class E of the GPDO. The Council argues that the development falls to be considered, but is not permitted, under Part 1, Class A. The onus is on the appellant to make their case on the balance of probabilities.
7. Subject to conditions and limitations, Class A permits the enlargement...of a dwellinghouse while Class E permits the provision within the curtilage of the dwellinghouse of any building...required for a purpose incidental to the enjoyment of the dwellinghouse as such.
8. The Council argues that a previous enactment of the GPDO stipulated that curtilage buildings of a certain size within 5 metres of an existing dwelling were to be treated as an enlargement of the dwelling and so to be assessed under Class A. However, the GPDO as in force at the time of the application did not contain such a stipulation.
9. The appellant suggests that the building falls to be considered under Class E because it is not attached to the dwellinghouse. I agree that since the proposed building would be separated from the dwellinghouse by some 7cm and accessed separately, it would not be an enlargement of the dwellinghouse as a matter of fact and degree. It falls to be considered under Class E and not Class A.
10. The Council suggests that the proposed building would not be required for a purpose incidental to the enjoyment of the dwellinghouse, partly on the basis that the structure would have harmful impacts on the living conditions of occupiers of the house. That point goes to the planning merits of the development which, as noted above, is outside of my remit.
11. The Council also argues that the building would be put to a "primary" rather than "incidental" use because of its size and proximity. Physical factors may be taken into account when deciding whether a proposed building is 'required', but they are not determinative of the nature of the use. Moreover, the GPDO sets no requirement that any Class E building is 'subordinate' to the dwellinghouse.
12. The primary use of the appeal property is as a dwellinghouse. The appeal building would be in the same primary use if it was to include primary living accommodation – but the proposed building would not.
13. An incidental use is one that has a normal functional relationship with a primary use. For a building to be 'required for a purpose incidental to the enjoyment of the dwellinghouse', the appellant must simply show that it is 'reasonably required'. They do not need to somehow prove that the building would be 'necessary' or small. Whether a building is 'reasonably required' cannot rest solely on the unrestrained whim of the householder, but equally does not need to be anything other than sensibly related to their enjoyment of the dwelling.
14. The use of a building in the curtilage of a dwellinghouse for a gym is a normal incidental use. There is no evidence that the proposed building would not be used for a gym as proposed – and I am satisfied from the submitted plans that

the scale of the building would constrain the use so that, as a matter of fact and degree, it would be reasonably and sensibly related to the appellant's enjoyment of their dwelling.

Conclusion

15. There is no dispute that the proposed building would not conflict with any of the conditions and limitations imposed on Class E. I conclude that it is required for a purpose incidental to the enjoyment of the dwellinghouse. It would be PD under Class E, and its construction would have been lawful if begun at the time of the application. The Council's decision to refuse to grant an LDC was not well-founded. The appeal is allowed and I will exercise the powers transferred to me under s195(2) of the 1990 Act.
16. This finding would not prevent the Council from exercising their powers of enforcement if the appellant proceeds to construct the proposed building not in accordance with the submitted plans, or to construct if for a different purpose, or if the building is subject to a future material change of use.

V Bond
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 17 September 2018 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 detached outbuilding for use as a gym, as described in the application Ref 18/03578/CEA dated 17 September 2018 and shown on the submitted plan DG-2018/002 would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

V Bond

Inspector

Date

Reference: APP/Q5300/X/18/3218125

First Schedule

A detached outbuilding for use as gym.

Second Schedule

Land at 16 Doveridge Gardens, Southgate N13 5BL.

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:

by V Bond LLB (Hons) Solicitor (Non-Practising)

Land at: 16 Doveridge Gardens, Southgate N13 5BL

Reference: APP/Q5300/X/18/3218125

Scale: NOT TO SCALE

