
Appeal Decision

Site visit made on 11 November 2019

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

an Inspector appointed by the Secretary of State

Decision date: 10 December 2019

Appeal Ref: APP/N1920/X/19/3220902

1 Woodlands Close, Borehamwood WD6 1SX

- 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 Nadarajah Ravikumar against the decision of Hertsmer Borough Council.
 - The application Ref 18/2116/CLP, dated 2 November 2018, was refused by notice dated 20 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 described as 'outbuilding construction'.
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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.

Main Issue

2. The main issue is whether the proposed outbuilding 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 as amended (GPDO).

Reasons

3. The appellant considers that the proposed building is permitted development (PD) under Part 1, Class E of the GPDO. 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. The onus is on the appellant to make their case on the balance of probabilities.
4. The Council appears to accept that the proposed uses as a garden store and office/gym/entertainment room are ones that would normally be considered purposes which are incidental to the enjoyment of a dwellinghouse. I have no reason to disagree as these have a normal functional relationship with the primary residential use of the house, but are not necessarily part and parcel of the residential use.
5. The Council contends though that the intended use of part of the proposed outbuilding as a shower room/bathroom would not be for a purpose incidental

to the enjoyment of the dwellinghouse. It submits also that the uses proposed do not require such a large outbuilding.

6. As regards the use of part of the building as a shower room/toilet, the Permitted development rights for Householders Technical Guidance explains that a purpose incidental to the enjoyment of a dwellinghouse would not cover normal uses which are part and parcel of the primary residential use - for example 'primary living accommodation such as a bedroom, bathroom, or kitchen'.
7. However, Class E makes no specific exclusion for any sort of use provided that it is for an incidental purpose as outlined and this is a matter of fact and degree in each case. Bathrooms are found in many buildings other than dwellinghouses because they contain essential human facilities. It is not unusual for an incidental outbuilding to contain a bathroom, particularly if the outbuilding also contains a gym or home office.
8. In this case the shower/toilet room proposed represents a very small part of the floor area of the proposed building and would be part and parcel of the incidental uses that the building would otherwise accommodate.
9. Turning to the size of the proposed outbuilding, there is no suggestion that the restrictions in E.1 of the GDPO would not be complied with. Nonetheless, in assessing whether a proposed use is for a purpose incidental to the enjoyment of a dwellinghouse, regard should be had to the nature and scale of the use proposed. Physical factors such as size may be taken into account as part of this assessment but are not conclusive.
10. It needs then to be shown that the building is reasonably required in order to accommodate the proposed use. The test is one of objective reasonableness. Whether a building is 'reasonably required' cannot rest solely on the unrestrained whim of the householder. Equally, the reasonable aspirations of householders should not be frustrated where the proposed use is sensibly related to the enjoyment of the dwelling.
11. Looking then at the building size and uses proposed, given the likely equipment/furniture and circulation space requirements for the gym/home office/entertainment uses, the building size proposed would be commensurate to these. The garden storage area proposed is also of modest size and so of an appropriate scale for residential use. Equally, the uses proposed are reasonably required in connection with the enjoyment of the dwellinghouse as a whole.
12. Drawing this all together, whilst the proposed outbuilding would have a large footprint relative to the house, as a matter of fact and degree, I find that the nature and scale of the proposed use means that it would be for a purpose incidental to the dwelling house. As regards the DCS reference 100-078-012 appeal decision referred to by the Council, it would seem that in that case, the then proposed outbuilding was some six times the footprint of the host dwelling, which is not the case here.
13. As regards the appeal decision which the Council cites as being similar to the present proposed scheme¹, it would appear that the Inspector in that case was dealing with a much larger building than is before me, and where the main

¹ APP/N1920/X/17/3170961

house itself was of such a size that it could be expected to accommodate some of the uses that were proposed.

Conclusion

14. I conclude then that the proposed building 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.
15. 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 2 November 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 outbuilding construction, as described in the application Ref 18/2116/CLP dated 2 November 2018 and shown on the submitted plans Stanfords VectorMap Location Plan and Drawing No PL-01 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 10 December 2019

Reference: APP/N1920/X/19/3220902

First Schedule

Outbuilding construction.

Second Schedule

Land at 1 Woodlands Close, Borehamwood WD6 1SX

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, 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 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: 10 December 2019

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

Land at: 1 Woodlands Close, Borehamwood WD6 1SX

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Scale: NOT TO SCALE

