
Appeal Decision

Site visit made on 3 December 2019

by A A Phillips BA(Hons) DipTP MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2019

Appeal Ref: APP/T5150/X/18/3218117

2 Glendale Gardens, Wembley HA9 8PS

- 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 Iqbal Hussain against the decision of the Council of the London Borough of Brent.
- The application Ref 18/1916, dated 20 May 2018, was refused by notice dated 13 July 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 construction of outhouse for gym/office and store for use in conjunction with the main house.

Summary of Decision: The appeal is allowed and a LDC is issued, in the terms set out below in the Formal Decision.

Main Issue

1. The main issue is whether the Council's decision to refuse to issue a LDC was well-founded. This turns on whether the proposed development would constitute permitted development by virtue of the provisions of Class E(a) of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO).

Reasons

2. In a case such as this the onus of proof is on the appellant to show that on the balance of probabilities the development would be lawful at the time of the application.
3. There is no dispute between the parties that the outbuildings would meet all the conditions set out in Paragraph E.1 of Schedule 2 (Part 1) (Class E) of the GPDO. Nonetheless, the Council refused the application on the grounds that given its size the proposed outbuilding would not be incidental to the enjoyment of the dwellinghouse.
4. The proposed outhouse for a gym/office and store would have a footprint of approximately 43.2 square metres. The evidence shows that the footprint of the original dwelling before it was extended was approximately 60 square metres. Therefore, in comparison to the floor space of the original dwellinghouse the building would be fairly large. In cases such as this size in itself is not conclusive, but it can be an important factor in determining whether outbuildings are incidental to the enjoyment of a dwellinghouse. It is

also important that although it is a matter for the occupant to determine what incidental purposes he wishes to enjoy, an objective test of reasonableness should also be applied with respect to the specific circumstances of each individual case. It is not satisfactory for an occupier to merely state that the outbuildings are incidental.

5. The key test to be applied is whether the use of the proposed outbuilding, when considered in the wider context of the planning unit, is intended and will remain ancillary or subordinate to the main use of the property as a dwellinghouse. In this particular case details have been submitted of the precise nature and scale of the space to be provided and the proposed uses. In terms of the gym/home office I consider that the space provided is suitable to accommodate a pool table with additional space for players to play and move around the table. Similarly, the gym area has space to accommodate a small range of equipment with some ancillary space for circulation and the store is a reasonable size for ancillary domestic purposes.
6. It is not sufficient for the appellant to state that the proposed outbuildings would be used for purposes which are incidental and label the plans accordingly, but in this case the plans are clearly labelled and their layout explained with regard to their intended purposes. I do not dispute that the purposes are incidental to the enjoyment of the dwellinghouse. As such in this case I consider there to be sufficient detail to determine that the proposed development is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Therefore, the appellant has satisfactorily discharged the burden of proof to demonstrate that the outhouse benefits from permitted development rights in accordance with the GPDO.

Conclusion

7. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful development in respect of the construction of outhouse for gym/office and store for use in conjunction with the main house was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

Formal Decision

8. The appeal is allowed and attached to this decision is as certificate of lawful development describing the proposed operation which is considered to be lawful.

A A Phillips

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 20 May 2018 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched 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 described would be permitted development by virtue of the rights conveyed by Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England).

Signed

A A Phillips

INSPECTOR

Date: 11 December 2019

Reference: APP/T5150/X/18/3218117

First Schedule

Construction of outhouse for gym/office and store for use in conjunction with the main house

Second Schedule

2 Glendale Gardens, Wembley HA9 8PS

NOTES

This certificate is issued solely for the purpose of Section 191 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 were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 11 December 2019

by **A A Phillips BA(Hons) DipTP MTP MRTPI**

Land at: 2 Glendale Gardens, Wembley HA9 8PS

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Scale: Do not scale

