



Appeal Decision

Site visit made on 17 December 2019

by Felicity Thompson BA(Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11th February 2020

Appeal Ref: APP/N5090/X/19/3233810

138 Clitterhouse Road, Cricklewood, London NW2 1DN

- 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 Gerhard Ampofo against the decision of the Council of the London Borough of Barnet.
 - The application Ref 19/2943/192, dated 23 May 2019, was refused by notice dated 17 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 'construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse. Northern half to be used as a study and games room. Southern half to be used as a garage.'
 - **Summary of Decision: The appeal is allowed, and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision.**
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Procedural Matter

1. The appellant has also submitted an appeal¹ in respect of the Council's refusal to grant an LDC for a proposed development described as 'construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse.' That appeal is the subject of a separate decision.

Main Issue

2. I consider that the main issue is whether the Council's decision to refuse to grant an LDC was well-founded.

Reasons

3. The appeal site is an end of terrace dwelling with a generous rear garden. At the end of the garden, closest to Brent Terrace, is a garage and shed. The proposed development involves the demolition of the garage and shed and the erection of a detached single storey garden building for purposes incidental to the use of the main dwellinghouse.
4. Planning permission is granted by virtue of permitted development rights for certain types of development subject to specified conditions and limitations. Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) grants

¹ APP/N5090/X/19/3229311

- permission for the provision within the curtilage of a dwellinghouse of any building, enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such subject to certain conditions and limitations.
5. The Council accepts that the proposed building would comply with all the limitations set out in Class E.1 and I have no reason to conclude otherwise. However, they argue that the outbuilding would not be incidental by virtue of its scale.
 6. The onus of proof is on the appellant to show, on the balance of probabilities, that what is proposed is reasonably required for a purpose incidental to the use of the dwelling as a dwelling. This is because there must be a prospect that the nature and scale of such activities could go beyond a purpose merely incidental to the enjoyment of the dwelling as such. In that context the physical size of the outbuilding could be a relevant part of the consideration in that it might represent some index of the nature and scale of the activities.
 7. The proposed building would be located within the curtilage and would have a footprint of 61.2sqm, which the Council states would be larger than the footprint of the house at 46.25sqm. The submitted plans indicate that the internal layout would be divided into two sections, with that end furthest from the house being used as a large single car garage with bike and other storage around it and the section closest to the house being used as an open plan games room and study area, with a modest seating area.
 8. Having regard to case law, such a generous amount of floor space does not in itself preclude the lawfulness of an outbuilding. However, when evaluating whether the outbuilding is reasonably required for the enjoyment of the dwellinghouse as such, matters such as personal preference are not conclusive factors. An unusually large building will not necessarily be reasonably required just because a householder says it is, and it is for the appellant to show that the building of the proposed size is reasonably required having regard to all the circumstances.
 9. The courts have confirmed that regard should be had to the use to which it is proposed to put a building and to consider the nature and scale of that use in the context of whether it is a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be an important consideration but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. The courts have also held that the term incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself.
 10. In this case, as in the other appeal, the appellant has provided little by way of explanation for the design and large size of the proposed building. He argues that the proposed uses are incidental to the dwellinghouse, that a single storey building is clearly incidental to an established three storey end of terrace family home and that it is intended to provide ancillary space for the family to use.

11. As already stated, the physical size of the building is not itself determinative. Moreover, the building would be single storey, in contrast to the two-storey nature of the main house which, with the extension on the rear roof slope, appears akin to a three-storey property.
12. No justification has been provided as to why the intended use of the building would be reasonably required to be incidental to the enjoyment of the main house. I consider, all of the proposed activities are, on the scale suggested, intrinsically incidental to the enjoyment of the dwellinghouse particularly taking into account that this proposal, unlike the previous, includes the provision of garage and storage space lost as a result of the demolition of the existing garage and shed. As a result, I am satisfied the outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse and as such it would constitute permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.

Other matters

13. I have noted third party representations however, the appeal is confined to the narrow remit of reviewing the Council's decision as to whether it was well-founded or not, planning merits are not relevant in this appeal.

Conclusion

14. For the reasons given above I conclude, on the basis of the evidence available, that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse, northern half to be used as a study and games room, southern half to be used as a garage, was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

FORMAL DECISION

15. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed works which are considered to be lawful.

Felicity Thompson

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 23 May 2019 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 proposal constitutes development within the meaning of section 55 of the Town and Country Planning Act 1990 for which planning permission is required. Planning permission is granted by Article 3(1) Schedule 2 Part 1 Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO) since the development falls within Part 1 Class E of the GPDO and the single storey garden building is reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

Signed

Felicity Thompson
INSPECTOR

Date: 11th February 2020

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First Schedule

Construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse. Northern half to be used as a study and games room. Southern half to be used as a garage, as shown on drawings numbered 0290-PD-000.01, 0290-PD-100.13 Rev A, 0290-PD-200.11 Rev A and 0290-PD-100.11 Rev B.

Second Schedule

Land at 138 Clitterhouse Road, Cricklewood, London NW2 1DN

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: 11th February 2020

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Scale: Not to scale

