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# Appeal Decision

**by Paul T Hocking BA MSc MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 30 March 2020**

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**Appeal Ref: APP/Y1945/X/19/3230306**

**22 Cassiobury Park Avenue, Watford WD18 7LB**

- 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 Kishor Harsiani against the decision of Watford Borough Council.
  - The application Ref 19/00399/LDC, dated 5 April 2019, was refused by notice dated 20 May 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 described as: Single storey rear outbuilding.
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## Summary of Decision

1. The appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision

## Procedural Matter

2. As the appeal relates to the lawfulness of a proposed outbuilding, views were sought from the parties as to whether it would be necessary for me to visit the site. No objections to this course of action were received and I do consider that injustice to the parties would arise from determining the appeal on the basis of the written evidence and plans before me.

## Main Issue

3. The main issue is whether the proposed operation, namely the erection of a single storey rear outbuilding, would be incidental to the enjoyment of the dwellinghouse to enable a certificate of lawfulness to be granted.

## Reasons

4. There is no dispute between the parties that the outbuilding would meet the strictures listed within E.1 of Class E of Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). However, the Council refused the application as the outbuilding, principally given its size, was not considered to be incidental to the enjoyment of the dwellinghouse and so would not be permitted development by virtue of E.(a) of the GPDO.

5. In such cases the onus is on the appellant to demonstrate, on the balance of probabilities, that the development would be lawful at the time the application was made. The appellant has therefore provided plans, including elevations for the proposed outbuilding, as well as listing its size as some 66.1 sqm. The appellant has also provided information about the proposed use for the outbuilding, namely as a home gym and for garden storage of tools and lawnmowers. It is not proposed to contain a bathroom or kitchen.
6. Relevant case law<sup>1</sup> as well as an appeal decision<sup>2</sup> have been brought to my attention. I therefore agree that although it is a matter for the appellants to determine what incidental purposes they wish to enjoy; an objective test of reasonableness should be applied with respect to the specific circumstances of each individual case. This is accordingly a fact and degree assessment.
7. Based on the evidence before me the appeal site consists of a two-storey detached dwelling set, according to the appellant, in an overall plot amounting to some 1186 sqm.
8. The proposed uses for the outbuilding would be uses that are in themselves incidental to the enjoyment of a dwellinghouse. There is also nothing within Class E of the GPDO that requires buildings to be of a particular scale in respect of the host dwelling.
9. The term incidental connotes an element of subordination in relation to the enjoyment of the dwellinghouse itself. When considered in the wider context of the planning unit I am satisfied on the evidence before me that the proposed outbuilding is conducive or sensibly related to the enjoyment of the dwellinghouse, such that it can be said to be incidental in terms of its size, design and layout. It therefore amounts to a functional relationship that might reasonably be found, and whilst large, it is not substantial given the comparative size of the plot and footprint of the dwelling.
10. I have sympathy for the Council's position that the outbuilding is of a size that in the future could be capable of providing habitable accommodation and be used as a self-contained dwelling. However, this is not what is proposed and if the outbuilding were constructed and then used in breach of planning controls, that would be a subsequent matter as opposed a test before the development commences. It has also been brought to my attention that planning permission<sup>3</sup> for what are said to amount to substantial enlargements to the dwelling have already been granted, but I have little evidence before me that this would be a determining factor for the purposes of my assessment.
11. In this case it has therefore been demonstrated, on the balance of probabilities, that despite its size, the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse. The appellant has therefore satisfactorily discharged the burden of proof that the proposed outbuilding is permitted development for the purposes of the GPDO to enable a certificate of lawfulness to be granted.

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<sup>1</sup> Emin v SSE (1989) 58 P. & C.R 416

<sup>2</sup> APP/Y1945/X/17/3175148

<sup>3</sup> 15/00293/FULH

## **Conclusion**

12. 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 a single storey rear outbuilding 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**

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

*Paul T Hocking*

INSPECTOR

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## 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

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**IT IS HEREBY CERTIFIED** that on 5 April 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged thickly in black on the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed outbuilding is conducive or sensibly related to the enjoyment of the dwellinghouse, such that it can be said to be incidental in terms of its use, size, design and layout.

Signed

*Paul T Hocking*

Inspector

Date 30 March 2020

Reference: APP/Y1945/X/19/3230306

### **First Schedule**

Single storey rear outbuilding as per drawing numbers: CPA22-01-1001; CPA22-01-1002

### **Second Schedule**

Land at 22 Cassiobury Park Avenue, Watford WD18 7LB

## 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, was 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 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.



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## Plan

This is the plan referred to in the Lawful Development Certificate dated: 30 March 2020

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Scale: DO NOT SCALE

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