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# Appeal Decision

**by D Fleming BA (Hons) MRTPI**

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

**Decision date: 01 June 2020**

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**Appeal Ref: APP/F5540/X/19/3240428**  
**8 Bridge Road, Hounslow TW3 1SG**

- 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 Kasim Lakhani against the decision of the Council of the London Borough of Hounslow.
  - The application, Ref 00154/8/LAW1, dated 2 August 2019, was refused by notice dated 25 September 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 the erection of a single storey garden room in the rear garden of an existing dwelling.
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## Decision

1. The appeal is dismissed.

## Preliminary Matter

2. The Planning Inspectorate initially made arrangements for this appeal to be determined following a site visit which was scheduled to take place in May 2020. That event could not take place given the Health Protection (Coronavirus, Restrictions) (England) Regulations 2020 and related guidance.
3. The file has subsequently been reviewed to consider the optimal procedure for the appeal. It appeared that the appeal could be determined on the papers – that is, without a site visit – without causing prejudice to any party. This is because the case turns on legal points and the parties have submitted sufficient plans to understand the nature of the site given the points in dispute. The parties were contacted on 24 April 2020 and it was agreed that as the appointed Inspector I could proceed to a decision on this basis.

## Procedural Matters

4. Section 192(2) of the Town and Country Planning Act 1990 (the Act) indicates that if, on an application under that section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect. In any other case they shall refuse the application. Applying the terms of s192(2) of the Act to the appeal proposal, the Council has determined the application against the

provisions set out in Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (the GPDO).

### **Main Issue**

5. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well founded.

### **Reasons**

6. The appeal relates to a terraced property with a rear garden abutting an area to the rear of commercial premises. It is currently used as a parking area shared with the adjacent property at No 10 Bridge Road. The appellant proposes to erect a single storey outbuilding described as a garden room on the plans, 4.5m wide, 6.5m deep and 2.5m high within his part of the garden. This would be positioned at the end of the plot about a metre from the boundary and would be laid out as one main room with a smaller room containing a toilet and hand basin.
7. The Council's reason for refusal is that the proposal would not constitute permitted development (PD) under Class E as the proposed outbuilding would contain primary living accommodation. It would also not be reasonably required for purposes incidental to the enjoyment of the dwelling, due to its size.
8. Class E of the GPDO grants planning permission for any building or enclosure, swimming or other pool within the curtilage of a dwelling house for a purpose incidental to the enjoyment of the dwelling house as such. This is subject to certain conditions and limitations. The parties agree that the proposed outbuilding would not contravene any of the specific physical requirements and limitations set out in Class E and I see no reason to take a different view.
9. When evaluating whether the development is reasonably required for the enjoyment of the dwelling house as such, matters such as personal preference are not conclusive factors. The matter also does not rest on the unrestrained whim of the householder. A sense of objective reasonableness is required in all the circumstances of the particular case. The outbuilding will not necessarily be reasonably required just because the householder says it is and it is for an appellant to show it is reasonably required and designed with incidental uses in mind, having regard to the circumstances. This is because there is no statutory definition of "incidental" in the GPDO.
10. The appellant explains in his appeal that the outbuilding would be used for three purposes; firstly, as a home office, secondly as an area for exercising and thirdly, for entertainment. These uses would occur at different times depending on which members of his family would be within the building.
11. Whilst use as a home office and gym are capable of being uses incidental to the residential use of the main dwelling, it is not clear what is meant by an 'entertainment' use. The appellant provides no further explanation to support his case on this point and, in my view, a dwelling house is capable of being used for 'entertainment'. For example, amusement and enjoyment can be derived from food and drink shared with friends and family in a dining room and lounge and on-line gaming often takes place in lounges and bedrooms.

12. The Department for Communities and Local Government publication 'Permitted development rights for householders: technical guidance' sets out the meaning of incidental does not cover use of an outbuilding for primary living accommodation, such as a lounge. The Council are concerned that the inclusion of a toilet and hand basin amounts to primary living accommodation but this facility would only take up a fraction of the floor area in the outbuilding. Whilst in order for a building to be considered as PD all of it must be required for incidental purposes, it is not considered that the inclusion of a toilet would necessarily mean that the building could not be considered as PD.
13. Therefore, whilst I am satisfied that two of the proposed activities could be said to be incidental, I am not satisfied, as it has not been shown by the appellant, that the outbuilding would be required for incidental purposes all of the time. As such, it would not fall within the scope of Class E as PD.
14. The Council submit that the floor space of the outbuilding, in the order of 30sqm, is significantly large when compared to the footprint of the existing dwelling, which is approximately 50sqm. However, the Courts have held that a generous amount of floor space for an outbuilding does not in itself preclude the lawfulness of an outbuilding.
15. Overall, on the evidence before me, I am not satisfied, as a matter of fact and degree, that the totality of the proposed outbuilding is genuinely and reasonably required to achieve the purpose of accommodating the proposed incidental activities. It therefore would not fall within the parameters of Class E, Part 1, Schedule 2 to the GPDO. Accordingly, it would not have been lawful at the time of the LDC application.

### **Conclusion**

16. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey garden room was well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

*D Fleming*

INSPECTOR