
Appeal Decision

by Mr K L Williams, BA, MA, MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 10 June 2020

Appeal Ref: APP/G5180/X/19/3225438

Greenwood, Bickley Park Road, Bickley, Bromley, BR1 2AT

- 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 D Hancock against the decision of the London Borough of Bromley.
 - The application, ref: DC/19/00102/PLUD and dated 3 January 2019, was refused by notice dated 27 February 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 internal alterations to an existing outbuilding.
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Decision

1. The appeal is allowed and attached to this decision is a Lawful Development Certificate describing the operations which it is considered would be lawful.

Preliminary Matters

2. The application for an award of costs made by the appellant against the Council is the subject of a separate decision.
3. The application form describes the proposal as not involving building or other operations or any change of use. It does not describe the proposed works in detail. However, they are described in a covering letter, dated 14 November 2018, as "internal alterations to an existing outbuilding". This appeal is determined on that basis. The Council's decision notice described the proposal as "internal alterations to existing building to provide a bedroom and shower room".

Background and Relevant Planning History

4. Greenwood is a detached dwelling in a substantial plot. The outbuilding is in its rear garden. It was granted planning permission in June 2014 under appeal decision APP/G5180/D/14/2217390. Planning permission was granted in May 2015 for alterations to its external finish, windows and doors (DC/15/00337/FULL6). The proposed works are shown in drawing 2343-18-PL501. They comprise the erection of internal walls. The effect would be to create a bedroom, shower room and living room. There would be no external alterations to the building.

Reasons

5. The main issue is whether the Council's decision to refuse to issue a Lawful Development Certificate (LDC) was well-founded. Planning merits are not relevant in this case. They are not an issue for me to consider in the context of an appeal under section 195 of the Act, which relates to an application for an LDC. My decision rests on the facts of the case, relevant planning law and judicial authority. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities.
6. The Council refused the application because the proposal "*would not constitute permitted development under Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) as on the balance of probabilities, the proposed use of the existing building would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse.*" The Council considers section 55(2)(d) of the Act as amended to apply. That section excludes from amounting to development the "*use of any building within the curtilage of a dwellinghouse for any purpose incidental to the enjoyment of the dwellinghouse as such*". It is argued that the change of use in this case would not fall within the term "incidental". Reference is made to guidance on the meaning of that term in the context of Class E in *Technical Guidance: Permitted Development for Householders*. It is also argued that the judgement in *Emin v SSE & Mid Sussex DC [1989] JPL 909* supports the Council's position.
7. Section 55 of the Act sets out the statutory definition of development. Section 55(2) provides that certain categories of operations do not amount to development. They include, at section 55(2)(a)(i), works for the maintenance, improvement or other alteration of any building which affect only the interior of the building. The proposed works to the building in this appeal do affect only the interior of the building. They therefore fall within the terms of section 55(2)(a)(i) and do not amount to development.
8. The proposed operations are limited to the erection of walls within the existing outbuilding. *Class E of Part 1 of Schedule 2 of the GPDO* concerns, amongst other things, the provision of a building within the curtilage of a dwellinghouse. The LDC application in this case does not entail the provision of a new outbuilding, so that the provisions of Class E, the Technical Guidance in respect of Class E and caselaw in *Emin* are not pertinent in this appeal. Nor does the LDC application seek to establish the lawfulness of any proposed change of use of the outbuilding, so that consideration of the effect of any such change is not required.

Overall Conclusion

9. The proposed operations do not amount to development. Having regard to the above and to all other matters raised the Council's decision to refuse to issue a lawful development certificate was not well-founded. The appeal should succeed. I shall exercise the powers transferred to me under section 195(2) of the Act as amended.

K Williams

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 3 January 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and outlined 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 operations are excluded from the definition of development by section 55(2)(a)(i) of the Act as amended.

Signed

K Williams

INSPECTOR

Date: 10 June 2020

Reference: APP/G5180/X/19/3225438

First Schedule

Internal alterations to an existing outbuilding.

Second Schedule

Land at Greenwood, Bickley Park Road, Bickley, Bromley, BR1 2AT.

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 June 2020

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