



Appeal Decision

Site visit made on 13 July 2020

by Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH

an Inspector appointed by the Secretary of State

Decision date: 27 July 2020

Appeal Ref: APP/A5270/X/19/3227495

St Judes Cottage, 12A Castlebar Hill, Ealing W5 1TD

- 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 Nicholas Friend against the decision of the Council of the London Borough of Ealing.
 - The application Ref 181308CPE, dated 22 March 2018, was refused by notice dated 15 February 2019.
 - The application was made under section 191(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 playroom and store.
-

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing operation which is considered to be lawful.

Main Issue

2. The main issue in this appeal is whether the Council's decision to refuse to grant a LDC was well-founded.

Preliminary Matters

3. The Council has not provided any submissions on the appeal, and did not attend the site visit. The appellant has made submissions and has provided responses to requests for information and evidence, since I must be satisfied on the balance of probabilities of the lawfulness of the operation in determining whether to issue a LDC.
4. The appellant has provided a copy of the Council's officer report and decision notice. The reasons given for refusal are "The proposal does not fall within the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015."

Reasons

5. The playroom and store as built constitute a single storey detached garden outbuilding. General planning permission for a building within the curtilage of a dwellinghouse incidental to its enjoyment, as is the case of the appeal development, is given by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') subject to exceptions and limitations (E1, E2, E3).

Exceptions and Limitations (E1, E2, E3)

6. The appellant states that permission to use the dwellinghouse as a dwellinghouse has not been granted only by virtue of a permitted change of use under the Order. As I have seen nothing in the papers, or on my site visit, to conflict with or contradict that evidence I accept it as fact on the balance of probabilities.
7. The total area of ground covered by the appeal building within the curtilage (other than the original dwellinghouse) does not exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).
8. No part of the appeal building is situated on land forward of a wall forming the principal elevation of the original dwellinghouse.
9. The appeal building is single storey.
10. The height of the appeal building does not exceed 2.5 metres (being the case of a building within 2 metres of the boundary of the curtilage of the dwellinghouse). In line with *Permitted development rights for householders - Technical Guidance*¹(p44) the height of the building should be measured from the highest ground level immediately adjacent to the building to its highest point. In the case of the appeal development, the highest ground level is at the eastern end of the building at the boundary with the Dame Gertrude Young Hospital.
11. The appeal building is not situated within the curtilage of a listed building.
12. The appeal development does not include the construction or provision of a verandah, balcony or raised platform.
13. I have seen no evidence to indicate that the land within the curtilage of the dwellinghouse is within an area of outstanding natural beauty, the Broads, a National Park, or a World Heritage Site. In any case the appeal building in its entirety is within 20 metres of any wall of the dwellinghouse.
14. I have seen no evidence to indicate that the land within the curtilage of the dwellinghouse is article 2(3) land. In any case no part of the building is situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.
15. Accordingly, I am satisfied on the balance of probabilities that none of the exceptions or limitations of Class E apply to the appeal development.

Conclusion

16. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of a playroom and store 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.

Andrew Walker

INSPECTOR

¹ Department for Communities and Local Government (April 2017)



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 22 March 2018 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, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The playroom and store benefits from planning permission as a building incidental to the enjoyment of a dwellinghouse within that dwellinghouse's curtilage by reason of Article 3(1), Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Andrew Walker

Inspector

Date: 27 July 2020

Reference: APP/A5270/X/19/3227495

First Schedule

Playroom and store

(as shown in Drawing Nos PL/MP/2869 -00, PL/MP/2869 -01 and PL/MP/2869 -02 submitted with the application)

Second Schedule

Land at St Judes Cottage, 12A Castlebar Hill, Ealing W5 1TD

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 use /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.



Plan

This is the plan referred to in the Lawful Development Certificate dated: 27 July 2020

by **Andrew Walker MSc BSc(Hons) BA(Hons) BA PgDip MCIEH CEnvH**

Land at: St Judes Cottage, 12A Castlebar Hill, Ealing W5 1TD

Reference: APP/A5270/X/19/3227495

Scale: Do not scale

