



Appeal Decision

Site visit made on 13 July 2020

by Alexander Walker MPlan MRTPI

an Inspector appointed by the Secretary of State

Decision date: 03 August 2020

Appeal Ref: APP/R5510/X/19/3236165

12 Jonson Close, Hayes UB4 0BS

- 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 Alka Bhola against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 51563/APP/2019/1370, dated 23 April 2019, was refused by notice dated 7 June 2019.
 - The application was made under section 192(1)(a) of the Town and Country Planning Act 1990 as amended.
 - The use for which a certificate of lawful use or development is sought is a detached outbuilding to use as a gym/games room.
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Decision

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

Main Issue

2. The main issue is whether the proposed outbuilding would be incidental to the enjoyment of the dwellinghouse.

Reasons

3. There is no dispute between the parties that the proposed building would meet the conditions and limitations set out in paragraph E.1, Class E, Part 1 of Schedule 2 of the Town and Country (General Permitted Development) (England) Order 2015 (the GPDO). The Council's reason for refusal was on the grounds that the proposed outbuilding, in conjunction with the existing outbuilding, by reason of its cumulative size and scale is not considered to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse.
4. It is a requirement of Class E of the GPDO that the proposed development should be "required for a purpose incidental to the enjoyment of the dwellinghouse as such". It is well-established in case law that the word 'required' should be interpreted as genuinely and reasonably required or necessary in order to accommodate the proposed use or activity. The burden of proof in such matters is upon the appellant to show that the proposal is genuinely and reasonably required. The case of *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416 established that whilst the size of the

building may be an important consideration when determining if a building is to be used as incidental to the enjoyment of a dwellinghouse, it is not by itself conclusive.

5. The Council contends that, in conjunction with the existing outbuilding, the cumulative footprint would be approximately 50sqm, 25% greater than the footprint of the original dwelling, which was 40sqm. During my site visit, I also noted a smaller, metal shed. However, the original dwelling has been extended at ground floor level to the side and rear, resulting in its current footprint being approximately 82sqm. Therefore, even taking into consideration the additional metal shed, the cumulative footprint of the outbuildings would not be unreasonably large in comparison to the host dwelling.
6. There is no evidence before me of any limitations or conditions within Class E of the GPDO that require the building to be related to the footprint of the host dwellinghouse in its original, or current, form. The proposal should be considered on the basis of whether it would be genuinely and reasonably required for a purpose incidental to the enjoyment of the existing dwellinghouse as it would be associated with that dwellinghouse rather than the original one. I note that this is a similar approach taken by the Inspector in the appeal referred to me by the appellant¹, whereby he considered whether the floor space attributed to the use was genuinely and reasonably required for a purpose incidental to the enjoyment of the dwelling as such and whether the space would fulfil its intended purpose and nothing more.
7. The Council also contends that the intended use of the building is vague and the appellant has not demonstrated why the proposal is reasonably required. Although the application form does not identify the intended use of the outbuilding, the drawings accompanying it identify it as a 'Games Room/Gym', comprising a single room occupied by three items of gym equipment and a snooker table. Its use as a games room/gym is also confirmed in the appellant's statement of case. The items depicted in the drawings are not unreasonable in number and the circulation space around them is not excessive. Whilst the appellant has not provided any justification as to why the proposal is needed, based on the evidence before me, I am satisfied that the building is genuinely and reasonably required to accommodate its proposed use, that of a games room/gym, which would be a use incidental to the enjoyment of the dwellinghouse.
8. Taking the above into account, having regard to the proposed use of the building and its comparison to the size of the existing host dwellinghouse, I find on the balance of probabilities that the proposed building would be used incidentally to the enjoyment of the dwellinghouse, and therefore would be permitted development.

Conclusion

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate was not well founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me under section 195(2) of the 1990 Act as amended.

Alexander Walker INSPECTOR

¹ Appeal Ref: APP/R5510/X/18/3213915

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 April 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and hatched 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 would constitute permitted development within the terms of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

Alexander Walker
Inspector

Date: 03 August 2020

Reference: **APP/R5510/X/19/3236165**

First Schedule

A detached outbuilding to use as a gym/games room in accordance with drawings 2019/044-01 and 2019/044-02.

Second Schedule

Land at 12 Jonson Close, Hayes UB4 0BS.

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: 03 August 2020

by **Alexander Walker MPlan MRTPI**

Land at: 12 Jonson Close, Hayes UB4 0BS

Reference: APP/R5510/X/19/3236165

Scale: Do not scale

