



Appeal Decision

Site visit made on 8 September 2020

by Roy Curnow MA BSc(Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 16 September 2020

Appeal Ref: APP/F5540/X/19/3233782

26 Woodland Gardens, Isleworth TW7 6LL

- 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 Vijay Vaghela against the decision of the Council of the London Borough of Hounslow.
 - The application Ref 01228/26/LAW2, dated 7 June 2019, was refused by notice dated 2 July 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 gym at rear of the garden.
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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 found to be lawful.

Preliminary Matter

2. The descriptions of the proposed development in the original application differ from that in the Council's decision. My decision uses that from the former.

Reasons

3. Under s192(1) of the Act, a person may apply for a lawful development certificate (LDC) for a proposed development if they wish 'to ascertain' whether this would be lawful. Here, the appellant seeks a certificate of lawful development for the proposed erection of a single-storey outbuilding. This would be erected at the end of the appellant's medium-sized rear garden. The plans accompanying the application show that the bulk of the proposed building would be used as a gym, with a small wc in one corner.
4. Class E, Part 1, Schedule 2, Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) sets out that, subject to certain conditions and limitations, outbuildings can be erected within the curtilage of a dwellinghouse for purposes incidental to the main dwelling without the need to expressly apply for planning permission. That is to say, that they are permitted development.
5. In this case, the Council finds that the building's dimensions and location accord with the terms of Class E. Having regard to the evidence before me, I find no reason to find otherwise. Its refusal to issue a certificate was based on

- the inclusion of the wc, which, it states, would result in a building that is not incidental to the use of the dwellinghouse.
6. In an appeal relating to a certificate of lawful development, the onus lies with the appellant to prove his case on the balance of probability. This should be based on evidence that is precise and unambiguous.
 7. The relevant permitted development right in Class E (a) reads as follows: "The provision within the curtilage of the dwellinghouse of — (a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, or the maintenance, improvement or other alteration of such a building or enclosure".
 8. Here, the appellant's case is limited to the following from his appeal form: "proposed outbuilding is at rear of the main dwelling house". This is a matter of the location of the building, rather than its use. The appeal turns on the latter.
 9. In support of its case, the Council cites the Government publication, 'Permitted development rights for householders: Technical Guidance' (the Technical Guidance). Amongst its comments on Class E rights, it states "A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen."
 10. I am aware of the onus on the appellant to prove his case, and that he has given little in this regard. However, this does not preclude decision-makers from using their own judgement in reaching a decision. The Council has itself done this, as its decision acknowledges that the proposed use of the building as a gym is incidental to the use of the dwellinghouse - even though the only evidence at the application stage were the application plans.
 11. In this case, the question to be addressed is whether the inclusion of a wc is reasonably necessary? Before doing so, it is necessary to draw a distinction between the bathroom referred to in the Technical Guidance and the facilities proposed here. It would be generally held that the former would include a bath and/or a shower. Neither are contained in the proposal, just a wc and a small handbasin. It would not equate to a bathroom.
 12. Although not a large garden, providing a wc in the gym would mean that its users would not have to walk back through the garden if they needed to go to the toilet. This would be especially beneficial when the weather is inclement. On this basis, I therefore find that inclusion would not render the gym building, as a whole, one that is not reasonably required for purposes incidental to the enjoyment of the dwellinghouse.

Conclusion

13. 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 gym at the rear of the garden 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.

Roy Curnow

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 7 June 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse at 26 Woodland Gardens, Isleworth TW7 6LL. In this and all other respects the proposed development meets the requirements for development permitted by Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) Order 2015.

Roy Curnow

Inspector

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First Schedule

Gym at the rear of the garden.

Second Schedule

Land at 26 Woodland Gardens, Isleworth TW7 6LL

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, would not have been 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: 16 September 2020

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Land at: 26 Woodland Gardens, Isleworth TW7 6LL

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Scale: Not to Scale

