



Appeal Decision

Site visit made on 14 September 2020

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

an Inspector appointed by the Secretary of State

Decision date: 12 October 2020

Appeal Ref: APP/M1595/X/20/3247023

Hill House, High Road, Orsett RM16 3LH

- 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 J Davis against the decision of Thurrock Borough Council.
 - The application Ref 19/01781/CLOPUD, dated 5 December 2019, was refused by notice dated 24 January 2020.
 - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
 - The proposed development for which a certificate of lawful use or development is sought is erection of outbuilding for use as a games room, gymnasium and garden room incidental to the enjoyment of the dwelling.
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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 in this appeal is whether the Council's decision to refuse the LDC application was well-founded.

Reasons

3. General planning permission for a building within the curtilage of a dwellinghouse incidental to its enjoyment 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).
4. According to the delegated report on the application, the Council does not dispute that the proposal would meet all the exceptions and limitations in respect of Class E were the building considered to be incidental to the enjoyment of the dwellinghouse on the site. I have seen no evidence which contradicts or conflicts with this agreed position between the parties, and accordingly find it to be the case as a matter of fact.
5. The proposed outbuilding would have an internal layout (as detailed in Drawing No 19/2906/04A) comprised of 4 separate areas – a garden room, a gym, a games room and a storage area. It is clear to me that each are intrinsically incidental to the enjoyment of the dwellinghouse and there would be a functional relationship between the occupation of the host property as a dwelling and the ancillary use of the building.

6. The Technical Guidance for *Permitted Development Rights for Householders* (2019, p41) 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."

The appeal proposal would have none of these features or facilities, nor would it support independent living, and I am satisfied that the purposes of the building are ones which are ancillary to the primary use as a dwellinghouse rather than integral to it.

7. The Council is concerned about the scale of the proposed building, but its dimensions comply under Class E and there is no statutory limitation in this regard relevant for determining whether a building would be used for incidental purposes. While the proposed building's size is not decisive, the single-storey building is clearly subordinate to the two-storey host dwelling and I do not consider that its footprint in comparison with the existing property (80.5sqm compared to 182.40sqm) is particularly large or is otherwise persuasive that its purposes would not be incidental. The Council's issue of a LDC for an incidental outbuilding that is in fact larger in footprint than the host dwellinghouse¹ reinforces that scale is not the determinative factor in these matters.
8. The proposed building would be located close to the existing swimming pool, a feature itself incidental to the enjoyment of the property, and situated around 20m from the host dwelling. There is nothing in these spatial arrangements which would cause me to find that the appeal proposal would not be used incidentally to the enjoyment of the dwelling.

Conclusion

9. 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 the proposed erection of an outbuilding for use as a games room, gymnasium and garden room incidental to the enjoyment of the dwelling 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 19/01067/CLOPUD, 5 September 2019

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 5 December 2019 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, 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 building operations would be granted planning permission by virtue of Article 3 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) for development permitted under the provisions of Class E of Part 1 of Schedule 2.

Signed

Andrew Walker

Inspector

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First Schedule

Erection of outbuilding for use as a games room, gymnasium and garden room incidental to the enjoyment of the dwelling as shown on plans: 19/2906/01; 19/2906/02; 19/2906/03; 19/2906/04A.

Second Schedule

Land at Hill House, High Road, Orsett RM16 3LH

IMPORTANT NOTES – SEE OVER

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: 12 October 2020

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Land at: Hill House, High Road, Orsett RM16 3LH

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Scale: Do not scale

