



Appeal Decision

Site visit made on 25 August 2020

by C Sherratt DipURP MRTPI

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

Decision date: 19 October 2020

Appeal Ref: APP/T5150/X/20/3244796

17 The Ridgeway, Kenton, Harrow HA3 0LJ

- 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 Hirani against the decision of The Council of the London Borough of Brent.
 - The application Ref 19/1768, dated 10 January 2019, was refused by notice dated 15 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 outhouse to rear garden to include garage space, Gym use and storage facilities only.
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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 Council's decision to refuse to issue a certificate was well founded.

Reasons

3. Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) permits the provision within the curtilage of the dwellinghouse of, amongst other things, any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such. These permitted development rights are subject to a number of conditions and limitations relating to the siting and size of the building. In this case, there is no dispute between the parties that the various criteria are met. The Council's concerns relate to whether the building can be regarded as being for purposes incidental to the enjoyment of the dwelling.
4. The proposed building would be some 9m x 6.6m with a footprint of around 59.4 square metres. This, the Council asserts, is excessive in relation to the footprint of the dwelling which the Council calculates to have a footprint of some 64 square metres, such that the building would not be incidental.

5. The appellant explains that the existing garage, within the dwelling is too small for the parking of vehicles. The garage is to be replaced with a new side extension in any event. I saw, during my site visit, that the existing out-rigger to the rear of the garage contained a number of cycles, a scooter, table-tennis table and various children's outdoor toys as well as being used for other general storage. Although I did not view inside the garage, it was clearly too narrow to facilitate vehicle parking.
6. To be regarded as incidental to the enjoyment of the dwelling, the building must be 'required for some incidental purpose'. Case law has established that it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose.
7. Accommodation to use as a garage, use of fitness equipment and household storage facilities would, in my view be purposes that can reasonably be regarded as being incidental to the enjoyment of the dwellinghouse. I note the occupier of the property is a keen cyclist and keep-fit enthusiast and DIY person. On balance, I consider that the internal space to be allocated to each of the various activities is not excessive. The proposed building is of a size that, in my view, is genuinely and reasonably required to accommodate those uses.
8. 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 proposed outhouse to rear garden to include garage space, gym use and storage facilities only 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.

C. Sherratt

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 10 January 2019 the operations described in the First Schedule hereto and shown on drawing No. 1366-001-PD in respect of the land specified in the Second Schedule hereto and shown edged 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 development is for a purpose incidental to the enjoyment of the dwellinghouse and satisfies all the limitations and conditions of Class E of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) which permits the provision within the curtilage of the dwellinghouse of, amongst other things, any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Signed

C Sherratt

Inspector

Date 19 October 2020

Reference: APP/T5150/X/20/3244796

First Schedule

Outhouse to rear garden to include garage space, gym use and storage facilities only

Second Schedule

Land at 17 The Ridgeway, Kenton, Harrow HA3 0LJ

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:

by C Sherratt DipURP MRTPI

Land at: Land at 17 The Ridgeway, Kenton, Harrow HA3 0LJ

Reference: APP/T5150/X/20/3244796

Scale: Not to Scale

