The Planning Inspectorate

Appeal Decision

Site visit made on 8 December 2020

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 8 February 2021

Appeal Ref: APP/N5090/X/20/3250925
138 Clitterhouse Road, Cricklewood, London NW2 1DN

- 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 Gerhard Ampofo against the decision of the Council of the London Borough of Barnet.
- The application Ref 20/1335/192, dated 11 March 2020, was refused by notice dated 8 April 2020.
- 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 described as: Construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse. Northern part to be used as a study and games room. Southern part to be used as a garage. Integral Bike Store and Garden Tool Store.

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 description of development in the heading above has been taken from the application form. However, the descriptions used on the decision notice and appeal form are different. Neither of the main parties has provided written confirmation that a revised description of development has been agreed. Accordingly, I have used the one given on the original application form.

Main Issue

3. The main issue is whether the Council's decision to refuse the certificate was well-founded or not.

Reasons

4. The Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') grants planning permission for specified forms of development. Schedule 2, Part 1, Class E of the Order grants planning permission for, amongst other things, the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such.

5. Class E contains specific limitations including in relation to building height and the extent of coverage of the curtilage. In objecting to the proposal, the Council has not drawn on any of the specific limitations for Class E buildings set out in paragraph E.1. of the Order and I have no reason to find the proposal does not comply with paragraph E.1. either.

6. The appeal site contains a 2 storey 3 bedroom end of terrace house with a large rear garden. I inspected all of the interior of the house at my site visit. The ground floor accommodates an open plan living room, kitchen and dining area. The first floor accommodates 2 bedrooms and a bathroom. An additional bedroom is accommodated in the roof-space, together with an en-suite.

7. The proposed building is shown in the application to accommodate a garage, bike store, garden tool store and games room and study. The Council considers these are all uses incidental to the enjoyment of the original house and I have no reason to disagree. However, the Council also considers that by reason of its scale and the cumulative uses proposed, the proposed building is not subordinate to the main dwellinghouse and therefore is not incidental to the enjoyment of it.

8. But the Order contains no specific limitation on scale for a Class E building relative to the main dwellinghouse or the coverage of the main dwellinghouse. Whilst the size of the building may be an important consideration it is not by itself conclusive. Whether the purpose of the proposed building is incidental to the enjoyment of the dwellinghouse as such is a matter of planning judgement based on fact and degree.

9. In my judgement, there is no reason why a building to accommodate a garage, bike store, garden tool store or games room and study, or a single building accommodating all of these, should not be considered a building required for a purpose incidental to the enjoyment of the dwellinghouse as such. It is entirely reasonable that an occupant of a dwellinghouse may want a Class E building for these purposes and it is my view that in land use terms they are subordinate in relation to the enjoyment of the dwellinghouse. Moreover, the appellant has clearly indicated how the spaces in the proposed building would be used and there is nothing in my view to suggest these are not reasonably required in the context of this case.

10. The Council questions why the likes of the study and games room cannot be incorporated into the main dwellinghouse. But this is not necessarily a basis for finding the proposal unlawful and having inspected all of the interior of the dwellinghouse, in the circumstances of this particular case, I am satisfied the building proposed is reasonably required, pursuant to Class E of the Order, despite its size.

11. The Council also questions why bikes and garden tools could not reasonably be stored in existing buildings, ie an existing garage and shed on the site. But the proposed building is intended to replace these and there is nothing in the Order which prevents such replacement, pursuant to Class E.

12. I have taken into account the findings of the Inspector in a previous appeal[1] relating to this site. That appeal was dismissed and was for a building of the same massing as that in the appeal before me. The Inspector found the spaces

[1] APP/N5090/X/19/3229311 dated 11 February 2020

intended to contain the uses seemed much larger than necessary. But the proposal before me is not the same as that which was before the previous Inspector and the appeal before me is accompanied by additional information in relation to the proposed use of the building. Having considered that additional information, I am satisfied the building proposed is required for a purpose incidental to the enjoyment of the dwellinghouse as such.

13. The Council has also drawn my attention to an allowed appeal[2] on this site, for similar uses, said to be on a scale of 61.20 sqm. But that appeal decision does not necessarily mean the larger development which is before me is not lawful. The Council has also referred to case law, but not to any specific case and no copies of any judgements have been provided for me to take into account or which lead me to a different conclusion.

Other Matters

14. I have considered representations received which object to the application, including on the basis that it is proposed to be used as a separate dwelling. But this decision relates only to the development described in the application and any development which is materially different may result in a breach of planning control which is liable to enforcement action by the local planning authority. Moreover, the views expressed by third parties on planning merits are not relevant when determining a lawful development certificate, as is set out in Planning Practice Guidance[3].

Conclusion

15. 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: "Construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse. Northern part to be used as a study and games room. Southern part to be used as a garage. Integral Bike Store and Garden Tool 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.

L Perkins

INSPECTOR

[2] APP/N5090/X/19/3233810 dated 11 February 2020
[3] Lawful development certificates - Paragraph: 008 Reference ID: 17c-009-20140306

The Planning Inspectorate

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 11 March 2020 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 proposed building, described on drawing numbers 0290-PD-100.00 A, 0290-PD-100.31, 0290-PD-100.33, 0290-PD-200.31 and 0290-PD-000.01 A submitted with the application, is required for a purpose incidental to the enjoyment of the dwellinghouse as such and complies with the limitations set out in Schedule 2, Part 1, Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed:

L Perkins
INSPECTOR

Date: 8 February 2021
Reference: APP/N5090/X/20/3250925

First Schedule

Construction of a single storey garden building with pitched roof for purposes incidental to the enjoyment of the original dwellinghouse. Northern part to be used as a study and games room. Southern part to be used as a garage. Integral Bike Store and Garden Tool Store.

Second Schedule

Land at 138 Clitterhouse Road, Cricklewood, London NW2 1DN

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.

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Plan

This is the plan referred to in the Lawful Development Certificate dated: 8 February 2021

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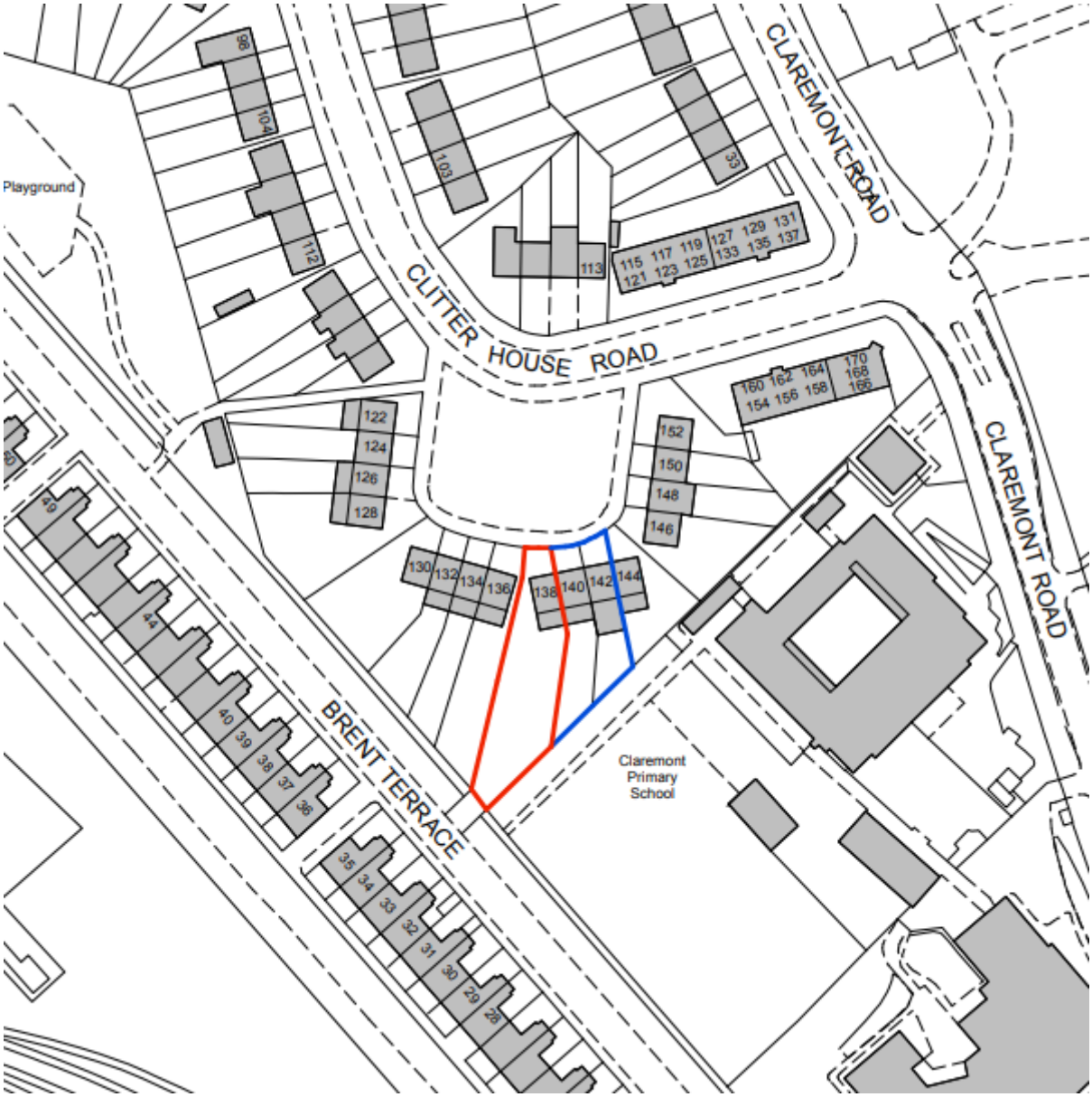
Land at: 138 Clitterhouse Road, Cricklewood, London NW2 1DN

Reference: APP/N5090/X/20/3250925

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