



Appeal Decision

Site visit made on 23 February 2021

by L Perkins BSc (Hons) DipTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 15 March 2021

Appeal Ref: APP/R5510/X/20/3258143 32 Star Road, Uxbridge UB10 0QH

- 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 Arek Marczewski against the decision of the Council of the London Borough of Hillingdon.
 - The application Ref 6964/APP/2020/1711, dated 4 June 2020, was refused by notice dated 28 July 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:
Demolition of the existing storage shed and summer house/art studio, erection of single storey detached outbuilding to serve as gym and art studio.
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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.

Application for Costs

2. An application for costs was made by Mr Arek Marczewski against the Council of the London Borough of Hillingdon. This application is the subject of a separate decision.

Preliminary Matter

3. I have taken the description of development in the heading above from the appeal form. This describes the development proposed more succinctly than that given on the application form. A different description appears on the decision notice but there is no evidence that version of the description has been agreed or that it covers all aspects of the proposal.

Main Issue

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

Reasons

5. The Town and Country Planning (General Permitted Development) (England) Order 2015 ('the Order') grants planning permission for specified forms of development.

6. 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. Class E contains specific limitations including in relation to building height and the extent of coverage of the curtilage.
7. 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.
8. Schedule 2, Part 11, Class B of the Order grants planning permission for any building operation consisting of the demolition of a building, subject to specific limitations and conditions. The Council raises no objection to the demolition proposed and there is no evidence any of the limitations or conditions of the Order would not be complied with in respect of the proposed demolition.
9. The appeal site contains a 2 storey semi-detached house which has been extended with a rear extension and front porch. The garden of the house widens significantly at the rear, behind the back of neighbouring properties to each side. It currently contains a large L-shaped storage shed and another outbuilding referred to as an art studio.
10. The drawings provided show that it is proposed to demolish the existing storage shed and art studio and erect a single new outbuilding, to accommodate a family gym and art studio. Section 4 of the application form confirms the existing storage shed and art studio are to be demolished as part of the proposal.
11. In its report, the Council states: "The outbuilding is to be used as a home gym and art studio and therefore would be incidental to the enjoyment of the main dwelling". I have no reason to disagree. Neither of the above uses are particularly unusual and I am satisfied that, when considered in the context of the planning unit, they are subordinate in land use terms to the main use of the property as a dwellinghouse.
12. But the Council also states that the proposed outbuilding **in conjunction** with the existing "garage/outbuilding", by reason of its size and scale is not considered to represent a development required for a purpose incidental to the enjoyment of the dwellinghouse (my emphasis). It appears that the Council is under the misapprehension that one, or part, of the existing curtilage buildings is to be retained which, based on the information provided, is not the case.
13. It is also considered by the Council that the proposed replacement outbuilding would be significantly above average size for a "study" and home gym. Although a study is not what is shown to be proposed, and, the Council has not explained how it has determined what 'average size' is in this context or how this offends Class E of the Order.
14. The Council states that the proposed outbuilding would equate to more than double the footprint of the main house and as such the proposal would not be commensurate to the scale and size of an outbuilding incidental to the enjoyment of the main house.

15. But the Order contains no specific limitation on size or scale for a Class E building relative to the main dwellinghouse or its footprint. Moreover, whilst size may be an important consideration, it is not by itself conclusive.
16. 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. Having considered all of the information available, I am satisfied that despite its size, the proposed building, to accommodate a family gym and art studio, is a building which is reasonably required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Conclusion

17. 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: "Demolition of the existing storage shed and summer house/art studio, erection of single storey detached outbuilding to serve as gym and art studio," 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



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 4 June 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 A-HL-032B-SL-001, A-HL-032B-BP-002, A-HL-032B-PL-100, A-HL-032B-PL-110, A-HL-032B-PL-120 and A-HL-032B-EL-200 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: 15 March 2021

Reference: APP/R5510/X/20/3258143

First Schedule

Demolition of the existing storage shed and summer house/art studio, erection of single storey detached outbuilding to serve as gym and art studio.

Second Schedule

Land at 32 Star Road, Uxbridge UB10 0QH

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: 15 March 2021

by L Perkins BSc (Hons) DipTP MRTPI

Land at: 32 Star Road, Uxbridge UB10 0QH

Reference: APP/R5510/X/20/3258143

Scale: Not to scale

