
Appeal Decisions

Site visit made on 16 February 2021

by N Thomas MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 17 March 2021

Appeal A Ref: APP/M1595/X/20/3257975

Glenfield, Brentwood Road, Bulphan RM14 3SL

- 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 & Mrs J Wakefield against the decision of Thurrock Borough Council.
 - The application Ref 20/00633/CLOPUD, dated 18 April 2020, was refused by notice dated 22 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 construction of gym outbuilding.
-

Appeal B Ref: APP/M1595/X/20/3257964

Glenfield, Brentwood Road, Bulphan RM14 3SL

- 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 & Mrs J Wakefield against the decision of Thurrock Borough Council.
 - The application Ref 20/00632/CLOPUD, dated 16 April 2020, was refused by notice dated 22 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 construction of garage outbuilding.
-

Decisions

1. Appeal A 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.
2. Appeal B 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.

Procedural Matters

3. Planning permission has been granted¹ for a replacement dwelling on the site which is subject to a condition removing permitted development rights, including for outbuildings. The appellant states that the works for the

¹ Ref 17/01209/FUL

replacement dwelling have not begun, and I have no reason to conclude otherwise.

4. Planning permission² has been granted to use an existing double garage on the site as a residence on a temporary basis until 1 December 2020 when it should revert to use for the parking of vehicles.
5. The appellant is seeking certificates of lawfulness for the erection of two outbuildings, and as there are similarities between the issues raised by the two appeals, I have considered them together.
6. In relation to Appeal A, the appellant has provided amended drawings³ with the appeal, indicating a reduction in the width of the outbuilding, and the removal of part of the wall surrounding the hot tub. However, the appropriate way to seek to overcome the Council's concerns is through a new application. I have therefore determined the appeal on the basis of the drawings that were before the Council when it made its decision.
7. In an application for an LDC, the onus is on the applicant to provide all the relevant information and evidence to support their case. On appeal, the Inspector's role is to decide whether, on the evidence, the Council's refusal to issue an LDC was well-founded or not. The case must be considered solely on the relevant legal tests, and its planning merits are of no relevance. The burden of proof lies with the appellant. The appellant must show, on the balance of probabilities, that the developments proposed would, at the date of the applications, be lawful.

Main Issue

8. The main issue in both appeals is whether the Council's decisions to refuse to grant the LDC's were well-founded.

Reasons

9. Glenfield is a detached dwelling in a generous sized plot. At the time of my site visit there were several outbuildings, a caravan and various vehicles in the garden. The decisions turn on whether the outbuildings would be permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO).
10. The Council argues that the outbuildings are not required for a purpose incidental to the enjoyment of the dwellinghouse. In the case of the gym building, this is due to its scale and internal layout. In relation to the garage building it is due to its scale and its purpose to provide additional garaging. There is no disagreement that in all other the outbuildings respects would fall within the scope of Class E, and I have no reason to conclude otherwise.
11. Class E of Schedule 2 Part 1 of the GPDO gives planning permission for '(a) any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. It has been established by case law that an incidental use should be functionally related to the primary use, but not part and parcel of the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a use should be regarded as incidental

² Ref 19/00586/FUL

³ Drawing numbers 201 Revision 01, 202 Revision 01, 203 Revision 01

will be a matter of fact and degree. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and to determine whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. The size of the building in relation to the dwelling is relevant but not a conclusive factor.

Appeal A – gym outbuilding

12. The gym outbuilding would be a substantial single storey building, divided into six separate interconnected rooms. The largest room would provide a gymnasium with gym equipment, with smaller rooms providing a sauna, steam room, changing room with shower and WC, a plant room, and an external covered area for a hot tub. It would be for the use of the appellants and their parents who will be moving into the replacement dwelling. The appellants state that the building is particularly needed during the current pandemic and to assist with the recovery of their father from knee surgery.
13. Case law has established that a wide range of activities are capable of being considered incidental to the enjoyment of a dwelling. The indicative layout indicates that the main room would be a reasonable size to accommodate the equipment. The sauna and steam rooms would be a small part of the building and associated with its use as a gym. It could reasonably be expected that the building would require a plant room. It is not unusual to have a domestic hot tub, nor to require it to be partially enclosed. While the building would be large, the facilities it would provide would be relatively modest in size and likely to be what is needed to achieve their purpose. A WC and shower room could be primary accommodation but, in this case, it would not be unreasonable to regard it as part of the incidental use as a gym.
14. The Council argues that taken individually the rooms could be incidental, but that their provision as separate rooms in a single building of this size, in comparison to the existing house, go beyond what can be considered incidental. However, for the reasons I have set out, I find that the purpose of the building would be incidental to the use of the dwellinghouse, and its size is what would reasonably be required to fulfil that purpose.
15. On the evidence before me, I conclude that the building would be required for a purpose incidental to the enjoyment of the dwellinghouse and would be permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.

Appeal B - garage

16. The garage would be a large building that would provide bays for three vehicles. One of the bays would be deeper to provide space for a long wheel based camper van, resulting in an L-shaped building. The other two bays would provide covered storage for the appellants' classic vehicles. These vehicles are part of the appellant's personal collection and require safe and secure storage. The appellants have provided photographs of a range of scooters, cars, trucks and garden machinery, some of which I saw on site.
17. The provision of a building for car parking could reasonably serve a purpose incidental to the enjoyment of the dwellinghouse. In this case, the garaging would be primarily to provide storage for classic vehicles, in connection with the appellants' hobby. The scale of the proposed garage would be relatively modest, and would be of a size and design that could normally be found in the

curtilage of a dwelling of this size. While the collection of classic cars is the personal choice of the appellant, an outbuilding required in connection with a hobby is capable of being incidental, and the proposed building is of a size that is reasonably required to fulfil that purpose.

18. I acknowledge that there is already a double garage on the site, which is temporarily being used as a residence. The temporary permission for it to be used as a residence is stated to be required by a planning condition to cease on or before 1 December 2020. On that basis, the existing garage could be available for parking two vehicles on the site. However, for a property of this size, it is not unusual to have garaging for several vehicles. The existence of the existing garaging does not indicate that the proposed garage would be excessive in relation to its purpose. Concerns over potential future unauthorised uses of the building and previous enforcement investigations do not have any bearing on my decision.
19. I therefore conclude that the garage building would reasonably be required for a purpose incidental to the enjoyment of the dwellinghouse, and would be permitted development under Schedule 2 Part 1 Class E of the GPDO.

Conclusions

Appeal A - APP/M1595/X/20/3257975

20. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a gym outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

Appeal B - APP/M1595/X/20/3257964

21. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the construction of a garage outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act as amended.

N Thomas

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 18 April 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 operation is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas

Inspector

Date: 17 March 2021

Reference: APP/M1595/X/20/3257975

First Schedule

Construction of gym outbuilding

Second Schedule

Land at Glenfield, Brentwood Road, Bulphan RM14 3SL

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, was not 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: 17 March 2021

by **N Thomas MA MRTPI**

Land at: Land at Glenfield, Brentwood Road, Bulphan RM14 3SL

Reference: APP/M1595/X/20/3257975

Scale: Not to scale



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 16 April 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 operation is permitted development under the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

N Thomas

Inspector

Date: 17 March 2021

Reference: APP/M1595/X/20/3257964

First Schedule

Construction of garage outbuilding

Second Schedule

Land at Glenfield, Brentwood Road, Bulphan RM14 3SL

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, 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 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: 17 March 2021

by **N Thomas MA MRTPI**

Land at Glenfield, Brentwood Road, Bulphan RM14 3SL

Reference: APP/M1595/X/20/3257964

Scale: NTS

