



Appeal Decision

by K Stephens BSc (Hons) MTP MRTPI

an Inspector appointed by the Secretary of State

Decision date: 29 March 2021

Appeal Ref: APP/Q5300/X/20/3260997

61 Bramley Road, London N14 4HA

- 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.
 - The appeal is made by Mr T Jivajirahah against the decision of the Council of the London Borough of Enfield.
 - The application Ref 20/00500/CEA, dated 12 February 2020, was refused by notice dated 7 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 the erection of 2 outbuildings.
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Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development (LDC) describing the proposed development which is found to be lawful.

Application for costs

2. An application for costs was made by Mr T Jivajirahah against the Council of the London Borough of Enfield. This application is the subject of a separate Decision.

Preliminary Matters

3. The description in the banner heading is taken from the application form. The Council's description on the decision notice, and which the appellant agrees to on the appeal form, includes the unnecessary addition of "directly adjacent to the rear of the property" because the submitted plans clearly indicate where the two outbuildings would be located. I shall therefore proceed on the basis of the description of development within the application form.
4. It has not been necessary to do a site visit, as I am able to proceed to a decision based on the submitted evidence from both parties.
5. The purpose of an LDC application is to determine whether specified uses or operations would have been lawful on the date the application was made. As an LDC is not a planning application, the planning merits of the case do not fall to be considered.

Main Issue

6. In this case the main issue is whether the Council's decision to refuse the LDC application was well-founded. This turns on whether the proposed

development would constitute permitted development ('PD') under Class E of Article 3 and Schedule 2, Part 1 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (the 'GPDO'), on the date the application was made on 12 February 2020. I have not been advised that PD rights have been removed from the property.

Reasons

7. The appeal property is a two-storey semi-detached dwelling with an existing single storey rear extension across the entire width of the property. The proposed development would see the erection of two separate outbuildings each built in very close proximity to the rear elevation of the dwelling. The outbuildings would be separated from each other by an approximately 1 metre wide gap that would give access to the rear of the dwelling. Both outbuildings would be accessed separately and from the garden. One outbuilding is shown to be a storage shed, the other as 'external gym private use'.
8. Whilst the submitted elevations show the outbuildings appearing to be attached to the rear of the dwelling, a close up 1:25 detailed plan, together with the statements from both parties, make clear that each outbuilding would be set 50mm away from the rear wall of the dwelling.
9. The Council argues that there should be a 'suitable or significant gap' between the rear of the dwelling and the outbuildings for them to be considered under Class E of the GPDO. As the gap is only 50mm, the Council contends that the outbuildings would be an extension to the dwelling itself under Class A of the GPDO, which relates to the 'enlargement, improvement or other alteration of a dwellinghouse' subject to a series of conditions and limitations.
10. Class E permits the 'provision within the curtilage of the dwellinghouse of any building...required for a purpose incidental to the enjoyment of the dwellinghouse as such...'. There are various limitations, including restricting the height of any such building, its floor area as a proportion of the total area of the curtilage and that they cannot be located forward of a wall forming the principal elevation of the original dwellinghouse.
11. Prior to 2008, the GPDO did stipulate that buildings with a volume greater than 10 cubic metres and sited less than 5 metres from the dwelling were treated as an enlargement of the dwelling to be considered under Class A. However, in the version of the GPDO in force on the date the application was made, there is no such commentary, condition or limitation that specifies a minimum distance a Class E building must be sited away from the dwelling.
12. The Government's Technical Guidance¹ provides some further clarification that buildings which are *attached to a house* (my emphasis) are not permitted under Class E. It therefore follows that a Class E building must be separated from the dwelling by a gap of some sort, otherwise it would be attached and an extension. However, there is no mention of how big or small that separation must be, or that the gap must be significant, something the Council itself does not quantify. The Council also refers to a dictionary definition of an outbuilding being 'subordinate', but Class E makes no such stipulation.

¹ Permitted development rights for householders - Technical Guidance. Published by MHCLG Sept 2019

13. From the evidence before me, the proposed outbuildings would not be attached to the rear of the dwelling, but separated from it by a gap, albeit a small gap. Therefore the two proposed outbuildings fall to be considered under Class E, and not as an extension to the dwelling under Class A.
14. The Council further argues that if the development was found to fall under Class E, the outbuildings would not be incidental to the enjoyment of the dwellinghouse due to the harm caused to the occupiers of the existing dwelling from loss of outlook, light, and would provide 'primary' rather than 'incidental' accommodation because of their proximity to the dwelling.
15. I share the Council's concerns about the resulting levels of light and outlook to the rear room of the dwelling. However, as already stated, the planning merits of any LDC development fall outside the consideration of what is lawful. Furthermore, Class E does not require an assessment to be made about the effects a building would have on someone's living conditions.
16. However, it is crucial that Class E buildings are built for a "purpose incidental to the enjoyment of the dwellinghouse". Limitation E.4 of Class E explains that this includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic or personal enjoyment of the occupiers of the dwellinghouse. This is of limited help in this case when the plans show the buildings would be used as a storage shed and as a personal gym.
17. The Technical Guidance expands on this to say that there can be a large range of other buildings that can include garden sheds, other storage buildings or garages. It also states that an incidental purpose would not include the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen. The courts have held that an essential feature of an incidental use is that it should have a functional relationship with the primary use, in this case the dwellinghouse, and the relationship should be one that is normally found. I am satisfied that a storage area and a gym for private use are normal and common uses required for a purpose incidental to the enjoyment of occupiers of the dwellinghouse that would fall under Class E.
18. The Council draws my attention to three appeal decisions² whereby Inspectors dismissed outbuildings in close proximity to the rear of the dwelling, as they would not be incidental. The appellant has provided the plans submitted for these appeal decisions. Each building extended across the entire width of the rear of the dwelling and could only be used and accessed from rooms within the dwelling. Consequently the Inspectors concluded, rightly in my view, that the developments had been contrived as extensions to the dwelling as their configuration made it likely that the spaces created would be used as part of the primary use of the dwelling, and not for incidental purposes.
19. However, these are significant differences with the appeal proposal before me. The proposed outbuildings do not extend entirely across the width of the dwelling. Moreover, the proposed outbuildings can only be used and accessed by exiting the dwelling, proceeding down the 1 metre wide path between the two outbuildings and then entering the end of each building through its own separate door from the garden.

² Appeal refs: APP/Q5300/X/18/3206594, APP/Q5300/X/19/3220325, APP/Q5300/X/19/3228822

20. The appellant has also provided three more appeal decisions³ of various outbuildings that were allowed in close proximity to the rear of the dwelling, although I have not been provided with the plans for all of these. In contrast, those Inspectors found that in the particular circumstances before them, the buildings came under Class E for purposes incidental to the dwellinghouse. Nonetheless, I must consider the appeal proposal on its own merits.
21. I am aware from the planning history that the property has been subject to a number of refused applications for rear extensions and alterations of outbuildings to form an extension. An LDC was granted for two smaller buildings⁴, also 50mm away from the dwelling. However, there was greater separation between the two buildings and both were to be used for storage, such that the proposal was markedly different from the scheme before me. I can understand the Council may have some doubts about whether the proposed development is a contrivance. However, I must consider the case on the facts before me, relevant planning law and on judicial authority.
22. Whilst a 50mm gap is small and would likely pose some construction and long-term maintenance issues, the fact remains there will be a gap and the outbuildings will not be attached, connected or linked to the dwelling. I am satisfied that the construction and configuration of the outbuildings as shown in relation to the dwelling, and their proposed use as a storage shed and gym for private use are for normal uses required for a purpose incidental to the enjoyment of occupiers of the dwellinghouse and fall within Class E. Consequently, I find the proposed development would have been lawful at the time the application was made.
23. If the outbuildings were used in a different manner from that put to me, or they were made to attach, connect or link to the dwelling in some way, or there was any change to the circumstances or any of the factors I have considered, then the buildings and their use may no longer be lawful.

Conclusion

24. For the reasons above I conclude, on the evidence available, that the Council's refusal to grant an LDC was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me in section 195(3) of the 1990 Act as amended.

K Stephens
INSPECTOR

³ Appeal refs: APP/Y3615/X/17/3181457, APP/Q5300/X/18/3218125, APP/F5540/X/18/3209860

⁴ LPA ref: 18/01441/CEA



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 12 February 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged 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 two proposed outbuildings for use as a storage shed and as an external gym for private use, as described in the statement accompanying the application and shown on submitted Proposed Plans and Elevations drawing BR-2018002, would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

K. Stephens

Inspector

Date: 29 March 2021

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First Schedule

The erection of 2 outbuildings, as shown on the submitted Proposed Plans and Elevations drawing BR-2018002, showing their proposed use as a storage shed and as an external gym for private use.

Second Schedule

Land at 61 Bramley Road, London N14 4HA

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: 29 March 2021

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Land at: 61 Bramley Road, London N14 4HA

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Scale: Not to scale

