
Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2021

Appeal Ref: APP/Z5060/X/20/3260503
31 Amesbury Road, Dagenham RM9 6AA

- 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 Garan Davis against the decision of the Council of the London Borough of Barking & Dagenham.
 - The application Ref 20/01699/CLUP, dated 24 August 2020, was refused by notice dated 2 September 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 a single storey outbuilding in the rear garden with a flat roof and a maximum height of 2.5m from the natural ground level.
-

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.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.¹

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded.

Reasons

4. The appeal relates to a modest, two storey, end of terrace property occupied by the appellant, his partner and their two children. There is a rear garden that extends well beyond the side of the house which is approximately 240sqm in area.

¹ The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

5. The appellant holds a diploma in sculpture which he has practiced in his free time by renting an art studio. The cost of this has escalated recently and so he now wishes to erect an outbuilding at the bottom of his garden so that he can continue his hobby at home. The outbuilding would be 6.5m in depth and 8.2m in width with a height of 2.5m. Inside there would be four rooms: a sculpture room (14.85sqm), a stone carving/casting room (11.25sqm), a home office (9.9sqm) and a storeroom (7.5sqm). The home office would be for his partner as there is no space within the dwelling for an office, other than in the lounge, which is difficult to accommodate with two children. The storeroom would replace the space occupied by an existing dilapidated garden shed and would be used to store bikes, garden furniture and garden equipment.
6. The Council's reason for refusal is that the use of the outbuilding would not be incidental to the enjoyment of the dwelling. As such, it would not accord with Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).
7. Class E of the GPDO grants planning permission for any building or enclosure, swimming or other pool, within the curtilage of a dwelling for purposes incidental to the enjoyment of the dwelling as such. This is subject to certain conditions and limitations. The parties agree that the proposed outbuilding would not contravene any of the specific physical requirements or limitations set out in Class E and I see no reason to take a different view.
8. The Council are concerned that the proposed use for sculpture/stone carving and casting would not be an incidental use as the appellant used to rent an art studio to carry out these activities. They make no comment about the home office use or the storeroom use. Although not referred to in the Council's decision letter, the officer report on the application sets out conflicting views on the acceptability, or otherwise, of the size of the outbuilding. On the one hand it is stated that as it would occupy only 22% of the rear garden area, this would be acceptable. On the other hand, it states the footprint of the outbuilding would be greater than the footprint of the dwelling, which would make it a significant building.
9. When evaluating whether the development is reasonably required for the enjoyment of the dwelling house as such, matters such as personal preference are not conclusive factors. The matter also does not rest on the unrestrained whim of the householder. A sense of objective reasonableness is required in all the circumstances of the particular case.² The building will not necessarily be reasonably required just because the householder says it is and it is for an appellant to show it is reasonably required and designed with incidental uses in mind, having regard to the circumstances. This is because there is no statutory definition of "incidental" in the GPDO.
10. I find the proposed uses of home office and storeroom would be incidental to the enjoyment of dwelling. The appellant has shown that these uses are reasonably required and the proposed space that would be allocated to these uses would not be excessive. They are examples of incidental uses in typical spaces enjoyed by many householders.
11. The desire for space for a sculpture room and a stone casting/carving room is unusual but the novelty of the use does not necessarily mean it would be

² Emin v SSE & Mid Sussex DC [1989] EGCS 16

unacceptable. The appellant has explained it is his hobby, that he has full time employment elsewhere and his submissions outlined the need for two rooms. This is due to the dust and mess created in the activity and the need to store and use bulky equipment and materials, such as: work benches, vices, stone, clay, plaster and wood. The proposed areas involved would be between the size of a single and double garage. Such spaces are often found within the curtilage of a property and are re-purposed for a variety of uses. Common examples include using the space to store and restoring a classic car, use of the space for model railway layouts as well as the ubiquitous games room with a competition size snooker table. If the Council had concerns over the floor area proposed for the uses, then it is my view they are not clearly made out.

12. As to the idea that where a hobby is practiced effects whether it could be considered to be a hobby, this has not been substantiated by the Council. The examples provided by the appellant of paying for gym membership or installing a gym at home or paying to rent a music studio or practicing with band members at home illustrate that there is very little or no weight in the Council's argument.
13. In conclusion, it is considered that the appellant has demonstrated that the proposed outbuilding is reasonably required, and also designed with incidental uses in mind. As there is no disagreement over whether the physical criteria of Class E are met, I find that the proposed outbuilding would be permitted development.

Conclusion

14. 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 the erection of a single storey outbuilding in the rear garden with a flat roof and a maximum height of 2.5m from the natural ground level 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.

D Fleming

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 24 August 2020 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and 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 construction of the outbuilding constitutes development within the meaning of section 55 of the Act for which planning permission is required. Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 since the development falls within Class E of Part 1, Schedule 2 and is thus permitted development.

Signed

D Fleming

Inspector

Date 20 May 2021

Reference: APP/Z5060/X/20/3260503

First Schedule

The erection of a single storey outbuilding in the rear garden with a flat roof and a maximum height of 2.5m from the natural ground level in accordance with drawing numbers: Site location plan – dated 13 August 2020, Proposed site plan – dated 13 August 2020, Proposed elevations – 001, dated August 2020 and Proposed floor plan – 002, dated August 2020.

Second Schedule

Land at 31 Amesbury Road, Dagenham RM9 6AA.

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 D Fleming BA (Hons) MRTPI

Land at: 31 Amesbury Road, Dagenham RM9 6AA

Reference: APP/Z5060/X/20/3260503

Scale: not to scale

