



Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12TH July 2021

Appeal Ref: APP/A5270/X/21/3266441

5 The Bye, Acton, London, W3 7PG

- 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 Felix Akiga against the decision of the Council of the London Borough of Ealing.
 - The application Ref 2042007CPL, dated 17 October 2020, was refused by notice dated 10 December 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 erection of rear outbuilding for use incidental as a gym and home office/storage.
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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 considered to be lawful.

Preliminary Matter

2. I consider that this appeal can be determined without the need for a physical site visit given the written submissions and nature of the appeal. Neither the Council nor the appellant have raised objections to the appeal proceeding on this basis.

Application for costs

3. An application for a full award of costs was made by the appellant against the Council. This application is the subject of a separate decision.

Main Issue

4. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. The Council's reason for refusal was that '*The proposal would not fall within the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO'). It is therefore not lawful and planning permission would be required.*'
5. In order to be successful in this appeal the appellant must show that the development would fall within the provisions of Schedule 2, Part 1, Class E of

the GPDO in that the proposed outbuilding would be within the curtilage of the dwellinghouse at 5 The Bye ('No.5') and for a purpose incidental to the enjoyment of that dwellinghouse. The Council accepts that the proposed development is within the curtilage of No.5 and would not exceed the limitations set out in E.1 (in terms of the height, location and proportion of the curtilage covered and other limitations) and I do not need to consider these further.

6. The Council's reason for refusal was predicated on the size, scale and layout of the proposed development and they calculated the footprint at around 41sqm (which is not contested by the Appellant although they argue that the internal floorspace is less). The Council concluded that the scale of the proposed outbuilding would mean that the use could not be considered as incidental to the enjoyment of the dwellinghouse when compared to the original footprint of the ground floor. The application for the proposed development included plans that showed its intended configuration as a gym and attached shower and toilet. The description on the appeal and the statement submitted by the appellant describes the outbuilding for use incidental as a gym and home office/storage and the plans submitted during the appeal indicate an additional internal wall to partition the original gym area to provide two separate rooms. The proposed size, scale and external treatments have not changed since the application stage. The Council has not raised any objection to the internal plans being changed in this way.
7. An essential feature of an incidental use is that it should have a functional relationship with the primary use (in this case the residential use of the dwellinghouse) and that the relationship is one that is normally found. Caselaw holds that this assessment will be a matter of fact and degree in each instance, but the use cannot be for a primary residential purpose, and that regard should be had to not only the use but also the nature and scale of that use.
8. Whilst the floor area in this case is fairly large in proportion to both the original and existing ground floor areas of No.5, it is less so when considered in the context of the overall size the dwellinghouse (which also includes the first floor). A gym and office use can be associated with residential use and the attached shower room and toilet alone is not enough to show a primary residential use of the outbuilding (which would prevent it from being an ancillary use). I am therefore satisfied on balance that the proposed building is genuinely and reasonably required to accommodate these uses which are for purposes incidental to the enjoyment of the dwellinghouse, and not excessive in scale in relation to it.
9. 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 rear outbuilding for use incidental to the dwellinghouse as a gym and home office/storage 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.

Zoë Frank

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 17 October 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 outbuilding in the rear garden would be permitted development falling within the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Zoë Frank

Inspector

Date **12th July 2021**

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First Schedule

Erection of rear outbuilding for use incidental to the dwellinghouse as gym and home office/storage as shown on drawings: ZAAVIA/5TB/201 Issue B, ZAAVIA/5TB/202 Issue A, ZAAVIA/5TB/203 Issue A and ZAAVIA/5TB/205 Issue A

Second Schedule

Land at 5 The Bye, Acton, London, W3 7PG

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:

by Zoë Franks, Solicitor

Land at: 5 The Bye, Acton London, W3 7PG

Reference: APP/A5270/X/21/3266441

Scale: Not to scale

