



Appeal Decision

by **M Savage BSc (Hons) MCD MRTPI**

an Inspector appointed by the Secretary of State

Decision date: 31 August 2021

Appeal Ref: APP/A5270/X/21/3267966

23 Vyner Road, Acton W3 7LY

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended against a refusal to grant a certificate of lawful use or development (LDC).
 - The appeal is made by Mr Yaser Solati against the decision of London Borough of Ealing.
 - The application ref 203623CPL, dated 11 September 2020, was refused by notice dated 6 November 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 proposed single storey rear extension and proposed rear outbuilding.
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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 operations which are considered to be lawful.

Preliminary Matters

2. The appellant ticked 191 on the appeal form, however, it is clear from the application form that the application was for proposed development under section 192 of the Town and Country Planning Act 1990 (as amended). The Council dealt with it on this basis and so shall I.
3. I consider that this appeal can be determined without the need for a site visit. This is because I have been able to reach a decision based upon the information already submitted.
4. The application related to both a single storey rear extension and proposed rear outbuilding. The appellant advises that a separate application was made for the rear extension, which was granted by the local planning authority. Nevertheless, since the rear extension formed part of the LDC application submitted to the Council, I shall deal with it accordingly.

Main issue

5. The main issue is whether the Council's decision to refuse an LDC was well-founded. This will turn on whether the proposed development would constitute permitted development by virtue of the provisions of Article 3(1) and Class A and Class E(a) of Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)('the GPDO').

Reasons

6. An application under S192(1) of the Town and Country Planning Act 1990 (as amended)(the 'Act') seeks to establish whether (a) any proposed use of

buildings or other land; or (b) any operations proposed to be carried out in, on, over or under land, would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.

Single storey rear extension

7. Class A, Schedule 2 of the GPDO permits the enlargement, improvement or other alteration of a dwellinghouse, subject to certain conditions. The proposed extension would extend approximately 3 metres from the original rear wall of the dwellinghouse and would measure up to around 2.88 metres in height and would be constructed using materials to match the existing house. The Council advise that there are no conditions restricting permitted development rights at the property and the development would comply with other limitations set out within the GPDO. I have no reason to disagree with its conclusions in this regard.
8. Accordingly, the proposed single storey extension is development which would be permitted by Class A, Schedule 2 of the GPDO.

Outbuilding

9. In addition to the single storey rear extension, it is also proposed to extend an existing single-storey garage to form an outbuilding. The outbuilding would be extended to provide a games room, toilet room, garden room and garden storage room. The main dispute between the parties is whether the outbuilding would be incidental to the enjoyment of the dwellinghouse.
10. Case law has established that consideration of the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
11. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse. The word 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house.
12. A garden storage room could reasonably be expected to accommodate a lawn power and other gardening equipment. The area provided for garden storage would be relatively modest and whilst it would accommodate such items, the space provided would not be excessive.
13. A garden room can, in my view, be incidental as a means of enjoying the garden in a position away from the main house. I would expect the garden room to accommodate garden seating and other items, such as a small table. The space to be provided would be sufficient to accommodate such furniture but would not be excessively spacious.
14. The games room would also be modest in size, with circulation space between the games room and garden room. The space that would be provided would reasonably accommodate the play requirements of a family with children,

without being excessive. Although the building would contain a toilet and basin, having a toilet adjacent to a games room which is to be used by children is not unreasonable in my view. It would allow younger users of the games room to use the toilet with limited supervision, rather than having to go back into the main house.

15. The host dwelling is a 3 bedroom semi-detached property set in modest grounds. Although the outbuilding would occupy a substantial part of the rear garden, it would not exceed the limitations set out in the GPDO. The floor space provided by the outbuilding, although generous, would be less than the overall floor space provided by the dwelling and would therefore remain subordinate to it.
16. Given the above, I find on the balance of probabilities, that the proposed outbuilding would be for a purpose incidental to the enjoyment of the dwellinghouse and as such, is development which is permitted by Class E of Part 1 of the GPDO.

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 the construction of a single storey rear extension and rear 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 1990 Act as amended.

M Savage

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 11 September 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 operations would constitute permitted development within the terms of Schedule 2, Part 1, Class A and Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

M Savage

Inspector

Date 31 August 2021

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First Schedule

The construction of a single storey rear extension and rear outbuilding in accordance with the following drawings: Proposed Ground and First Floor Plan, drawing number 20-50-20-001 Revision R5; Proposed Elevations, drawing number 20-50-20-002 Revision R4; Proposed Elevations 2 drawing number 20-50-20-003 Revision R4.

Second Schedule

Land at 23 Vyner Road, Acton W3 7LY

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: 31 August 2021

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Scale: NTS

