



Appeal Decision

by Anthony J Wharton BArch RIBA RIAS MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 December 2021

Appeal Ref: APP/N5090/X/21/3280001

118 Colin Gardens, London NW9 6ER

- 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 Kishan Patel against the decision of the Council of the London Borough of Barnet.
 - The application Ref 21/3098/192, dated 4 June 2021, was refused by notice dated 2 July 2021.
 - 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: an extension to an existing rear outbuilding.
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Decision

1. The appeal is allowed and a Lawful Development Certificate is attached.

Procedural matter

2. Further to the case officer's letters to the parties, I consider that this appeal can be determined without the need for a physical site visit. This is because I have been able to reach a decision based on all of the submissions and all submitted photographs. The appellant and the Council have agreed to the appeal proceeding without a site visit and I am satisfied that, in dealing with it in this manner, no injustice is caused.

Background information

3. The appeal site is an existing outbuilding located at the bottom of the garden and adjacent to the western boundary of the appellant's property. This is a terraced two-storey, three-bedroomed dwellinghouse which is typical of the houses in this part of Barnet. The outbuilding is currently used for the storage of garden and other equipment and is approximately 16.5m² in area. The extension is sought to provide use as a domestic gym and a garden storage/maintenance building. The area of the proposed building

would be approximately 30m² with the new gym area being around 13.5m². An existing garden shed would be retained.

4. The submitted plans indicate that the rear part of the building would be retained for garden use, maintenance and storage, with the newly extended front part being used as the gym. The plans do not show any additional primary living accommodation. It is indicated on behalf of the appellant that the proposed gym reflects recent changes in respect of improved health and fitness and, more recently, the requirement for home workouts which arose due to the lockdowns associated with the Covid-19 pandemic.

5. There is no dispute between the appellant and the LPA that, in terms of its size and location, the proposed building complies with all of the dimensional and conditional requirements of Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended (GPDO). I have no reason to disagree and do not need to refer further to these agreed matters.

6. The LPA's reasons for refusal of the application are as follows:

The proposal is for a building operation/use which, by virtue of Sections 55 and 57 of the Town and Country Planning Act 1990, is development requiring planning permission, but such development is NOT PERMITTED under Class E, Part 1 of Schedule 2 of the Town and Country Planning (General Permitted Development) Order 2015 as amended as, in the absence of sufficient justification, by virtue of its scale the proposed extension to the existing rear outbuilding would result in a structure that could not be considered as incidental to the main dwellinghouse.

7. Both the Council and the appellant have referred to other similar appeal decisions relating to Class E buildings which are considered to assist their respective cases. I have noted all of these in reaching my decision in this case. However each application for a LDC must be considered on its merits and this is how I have dealt with this appeal.

Main Issue

8. The main issue in this appeal, therefore, is whether or not the appellant has demonstrated, on the balance of probability, that the proposal would be for a use which is incidental to the use of the dwellinghouse at 118 Colin Gardens.

Reasons

9. An appeal relating to a Certificate of Lawful Use or Development (LDC) is confined to the narrow remit of reviewing the LPA's reason for refusal and then deciding whether the reason(s) are well founded. The planning merits of the

case do not fall to be considered and the relevant test, relating to the submitted evidence, is '*the balance of probability*'.

10. National Planning Practice Guidance (PPG) indicates that an applicant is responsible for providing sufficient information to support a LDC application and that, without sufficient, precise and unambiguous information (my underlining), a LPA may be justified in refusing to grant a certificate. However, PPG also indicates that if an LPA has no contrary evidence itself and there is none from others to contradict or otherwise make the applicant's version of events less than probable, there is no good reason to refuse the application.

11. The Council accepts that the proposal meets all of the dimensional and conditional requirements of a Class E building. The delegated report also makes clear that it is accepted that such a gym and storage building is a use which, in principle, can be considered to be '*incidental*' to the enjoyment of the appellant's dwellinghouse. However, in this case it is stressed by the Council that the term 'incidental' connotes an element of subordination in relation to the enjoyment of the dwelling itself and that by reason of its scale the proposed outbuilding would not be subordinate to the main dwellinghouse.

12. The LPA makes reference to Case Law and the relevant case is *Emin v SSE & Mid Sussex DC [1989] JPL 909*. In that case it was held that regard should be had to the use that a building would be put and of the nature and scale of that use, in the context of whether it is a purpose '*incidental*' to the enjoyment of the dwelling. In terms of the requirement for such a building it was held that the word '*required*' meant '*reasonably required*' and that, whether this is the case, is a matter of objective fact and degree judgement.

13. It was held that the physical size of a building in comparison to the dwellinghouse can be an important consideration but would not, by itself, be a conclusive or determinative factor. It was found to be necessary to consider the nature of the activities proposed to be carried out, so as to ensure that they were genuinely and reasonably required as being '*incidental*' or conducive to the very nature of the residential occupation. The word '*incidental*' connotes an element of subordination and thus the use of such a building would have to be seen to remain subordinate to the main use as a dwellinghouse.

14. In this case the activities within the building are as set out in detail in the statement and plans submitted. The enlarged outbuilding would be divided into two different spaces. The rear part would continue to provide for garden maintenance and storage purposes and the new front section would house the gym. This new section would be around 13.5m² which, together with the existing area of 16.5m², would result in a building of around 30m².

15. Although the new building would be just short of double the size of the existing building, I do not consider that it would be perceived as being excessively large in comparison with the dwellinghouse in this long narrow garden. It is clear that the existing garden storage and maintenance use is

subordinate to the main house and thus there is no difference for this part of the new building. I also consider that a basic gym use in an outbuilding in this particular garden would be a subordinate use.

16. It follows, in my view, that the two proposed activities (garden storage and gym) can both be regarded as being genuinely subordinate and reasonable activities connected with the residential use of the appellant's property. Neither use constitutes primary living accommodation and from the submitted drawing it is clear that there is not even a shower room or WC forming part of the proposal.

17. As a matter of fact and degree, I consider that this garden and gym building can be considered to be reasonably '*incidental*', to the enjoyment of the appellant's dwellinghouse. In this particular case, I do not share the Council's concerns about the size and scale of the proposal. Whilst acknowledging the Council's concerns relating to size, there is nothing substantial, with regard to their case, to contradict or otherwise suggest that the proposed building would be anything but incidental to the enjoyment of the appellant's dwellinghouse.

Formal Decision

18. For the above reasons I conclude, therefore, that the Council's refusal to grant a Certificate of Lawful Use or development, in respect of the proposed outbuilding, was not well-founded and that the appeal should succeed.

19. The appeal is allowed and I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended and a Lawful Development Certificate is attached below.

Anthony J Wharton

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 2010: ARTICLE 35

IT IS HEREBY CERTIFIED that on 4 June 2021, the development described in the First Schedule hereto, in respect of the property specified in the Second Schedule hereto, was lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended), for the following reason: the operations were permitted by the Town and Country Planning (General Permitted Development) Order 1995 under Schedule 2, Part 2, Class E.

Signed

Anthony J Wharton Inspector

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First Schedule

an extension to an existing rear outbuilding

Second Schedule

118 Colin Gardens, London NW9 6ER

Notes:

This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended) and relates only to the above property.

It certifies that the development described in the First Schedule, at the property specified in the Second Schedule, was 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 development described in the First Schedule; to the property specified in the Second Schedule and to the plan submitted with the LDC application as follows: plan reference number COLG118 PD-01.

Any other development which is materially different from that shown on the above plans may result in a breach of planning control which is liable to enforcement action by the local planning authority.