



Appeal Decision

Site visit made on 8 June 2022

by E Griffin LLB Hons

an Inspector appointed by the Secretary of State

Decision date: 12 August 2022

Appeal Ref: APP/T5150/X/21/3277813

24 St. Augustines Avenue, Wembley HA9 7NX

- 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 Joseph Shanmuganathan against the decision of the Council of the London Borough of Brent.
 - The application ref 21/0797, dated 5 March 2021, was refused by notice dated 29 April 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 proposed gable end roof extension, rear dormer window and 2 front rooflights to convert loft and a single storey outbuilding in rear garden to dwellinghouse.
 - **Summary of Decision: The appeal is allowed in part and dismissed in part and a certificate of lawful use or development is issued in the terms set out below in the Formal Decision**
-

Main Issue

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

Reasons

2. A single application was made by the appellant for two separate elements at the appeal property namely a rear roof extension and an outbuilding at the end of the garden. I will therefore address the two separate elements of the application separately.

Gable end roof extension, rear dormer window and 2 front rooflights.

3. The appeal site is made up of a two storey semi-detached dwelling with a rear garden. The Council's reason for refusing to grant an LDC states that the proposed development was not permitted development and required planning permission. However, the Council's delegated report and the subsequent email exchange between the parties confirmed that it was the outbuilding in the rear garden that resulted in the refusal.
4. There is no dispute that the roof extension works satisfies all of the relevant limitations set out in the Town and Country Planning General Permitted Development Order 1995 as amended (GPDO) under Class B (Enlargement Consisting of Addition or Alteration to Roof and Class C (Other Alterations to the Roof). I see no reason to disagree with that assessment and will allow this part of the appeal and grant an LDC for the part of the application that relate to the roof works.

Outbuilding to the rear of the garden

5. The GPDO under Class E, Part 1, Schedule 2 permits the provision within the curtilage of the dwellinghouse of any building required for a purpose incidental to the enjoyment of a dwellinghouse subject to falling within specified limitations. The Council accepts that the proposed outbuilding would comply with all of the limitations set out in Class E.1 to E.3. However, the area of dispute between the parties is whether the outbuilding is for a purpose incidental to the enjoyment of the dwellinghouse.
6. In the case of *Emin V SSE* [1989] JPL 909, the court confirmed that regard should be had to the use to which it is proposed to put a building and to consider the nature and scale of that use in the context of whether the purpose is incidental to the enjoyment of the dwelling house. The physical size of the building in comparison to the dwelling house might be an important consideration but was not by itself conclusive. It was necessary to identify the purpose and incidental nature in relation to the enjoyment of the dwelling. In particular, there is a need to consider whether a proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or purpose.
7. The outbuilding would be 7.4 metres wide and approximately 40.65sqm and is labelled as storage. The burden of proof rests with the appellant and the appropriate test is on the balance of probabilities. The appellant simply states that he requires storage space. There are no details as to the nature of the storage, why it is needed, the internal layout of the building or justification as why the outbuilding of such a size would be reasonably required for purposes incidental to the main dwellinghouse. Any use cannot be a primary dwelling house purpose and must be incidental. The appellant has not discharged the burden of proof to show that the proposed outbuilding falls within the wording of Class E.

Formal conclusion

8. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the outbuilding was well founded and that the appeal in respect of that part should fail. However, the Council's refusal to grant a certificate in respect of the roof extension works was not well founded and the appeal should succeed in that respect. I will exercise accordingly the power transferred to me under section 195(2) of the 1990 Act as amended

Formal Decision

9. I allow the appeal in respect of the proposed roof extension works and I attach to this decision a certificate of lawful development describing the extent of the proposed operations which are considered to be lawful. I dismiss the appeal in respect of the proposed outbuilding.

E Griffin

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 5 March 2021 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red the plan attached to this certificate, would have been lawful within the meaning of section 192 of the Town and Country Planning Act 1990 (as amended) for the following reason:

The proposed gable end roof extension, rear dormer window and 2 front rooflights to convert loft would be permitted development in accordance with Class B and C of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015.

Signed

E Griffin

Inspector

Date: 12 August 2022

Reference: APP/T5150/X/21/3277813

First Schedule

Gable end roof extension , rear dormer window and 2 front rooflights to convert loft

Second Schedule

Land at 24 St. Augustines Avenue, Wembley, HA9 7NX

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, 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 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 on the Lawful Development Certificate dated 12 August 2022

By E. Griffin LLB Hons

Land at: 24 St Augustines Avenue, Wembley HA9 7NX

Reference : APP/T5150/X/21/3277813

Not to Scale

