

Appeal Decision

Site visit made on 3 August 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 15 August 2022

Appeal A - APP/N5090/X/21/3274224

61 Blessbury Road, Edgware HA8 0SU

- 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 by the London Borough of Barnet Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Krenar Jashari.
- The application, reference 20/6285/192, was accepted by the Council on 28 December 2020. It was refused by a notice dated 1 February 2021.
- The development for which a certificate of lawful use or development was sought was for the erection of a rear outbuilding for the purpose of a gym and storage room at No. 61 Blessbury Road, Edgware HA8 0SU.
- The application was made under section 192(1)(b) of the Act for a certificate of lawfulness for the proposed outbuilding.

Summary of decision: the appeal fails. A certificate of lawfulness is not issued.

Appeal B - APP/N5090/X/21/3274225

61 Blessbury Road, Edgware HA8 0SU

- 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 by the London Borough of Barnet Council to grant a certificate of lawful use or development.
- The appeal was made by Mr Krenar Jashari.
- The application, reference 21/1556/192, was dated 16 March 2021. It was refused by a notice dated 19 April 2021.
- The development for which a certificate of lawful use or development was sought was for the erection of an outbuilding at the rear of the house with flat roof and 4 no. of roof lights for use as a gym, office/storage at No. 61 Blessbury Road, Edgware HA8 0SU.
- The application was made under section 192(1)(b) of the Act for a certificate of lawfulness for the proposed outbuilding.

Summary of decision: The appeal succeeds. A certificate of lawfulness is issued.

Costs application

1. The Appellant, Mr Krenar Jashari, made an application for a full award of costs against the London Borough of Barnet Council. That application is the subject of a separate decision.

Appeal proposals

2. This decision deals with 2 separately submitted proposals for the construction and use of a domestic outbuilding in the rear garden of the 2 storey end of terrace dwellinghouse at No. 61 Blessbury Road. The first, Appeal A – our ref: APP/N5090/X/21/3274224, followed an application under s.192(1)(b) of the Act for the proposed construction of an outbuilding covering an area of 61.34m² at the end of the rear garden. The second, Appeal B – ref: APP/N5090/X/21/3274225, followed an application similarly made under s.192(1)(b) for the proposed construction of an outbuilding covering an area of 41m² at the end of the rear garden of No. 61.

Appeal A - APP/N5090/X/21/3274224 – Building floor area 61.34m²

3. The Town and Country Planning (General Permitted Development) Order 2015 as amended, (the Order), at Article 3 to the Order, Schedule 2 Permitted development rights, Part 1 - Development within the curtilage of a dwellinghouse at Class E.(a) permits the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such,
4. The interpretation of Class E at E.4. says that for the purposes of Class E, “purpose incidental to the enjoyment of the dwellinghouse as such” includes personal enjoyment of the occupants of the dwellinghouse. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. The Collins English Dictionary says: “If one thing is **incidental** to another, it is less important than the other thing or is not a major part of it.”.
5. In the case of *Emin v Secretary of State for the Environment and Mid-Sussex County Council* QBD 1989 58 P&CR, it was said that an outbuilding must be ‘required for some incidental purpose’ to be permitted development under Class E, but its size is not relevant. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. Whether a building is required for a purpose associated with the enjoyment of a dwellinghouse “cannot rely on the unrestrained whim of he who dwells there”. It was also held that the term incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. Reference is made to the need to consider whether, in the context of the planning unit, “the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse.”.
6. The *Emin* judgment helps to show that the relationship between the size of the proposed building and the size of the dwellinghouse itself is not, of itself, determinative. The Class E concessions neither mention such a size

relationship nor does it fix a limit on the size of an outbuilding. However, the words *incidental to the enjoyment of the dwellinghouse as such* impart some consideration of a relationship between the house and its outbuilding.

7. Those principles were reiterated in *LB Croydon v Gladden* [1994] 1 PLR 2 and *Holding v FSS & Thurrock BC* [2004] JPL 1405. The term 'required' is therefore interpreted for the purposes of applying Class E as meaning 'reasonably required'. Other judgments clarify that in each case it has to remain a matter of fact and degree as to whether facilities were, or were not, an integral part of the ordinary residential use of the primary unit (*Peche D'or Investments v SSE* [1996] JPL 311) and that the facilities could not be something for the provision of a primary dwellinghouse purpose, (*Rambridge v SSE & East Herts DC* [1996] QBD).
8. I need to consider whether the Appeal A building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.
9. The Appellant said the Appeal A 61m² building's floorplan layout showed a family gym/exercise/games room with a generous but not excessive 38.7m² area for several family members to use. It would have a range of floor machines and associated equipment laid out reasonably apart. The second element would be an area of storage for dry family rations, of garden equipment, storage of files/documentation etc. None of that would be unusual for a standard family's ancillary use. Each of the rooms inside the outbuilding would fulfil their intended purposes and allow for adequate circulation space.
10. In my view, the proposed appeal building would be notably large when compared to the main house it would serve. It would measure 7.6m wide, 8m deep and be up to 3m high. It would occupy a ground area of 61.34m² - considerably more than the 43.33m² occupied by the main dwellinghouse and be a high proportion of the total floor area of the 2 storey house. The gymnasium, by occupying an area of nearly 40m² would appear excessive for any reasonable needs and use by occupiers of the small house at No. 61. However, the Appellant referred to the needs of his extended family, implying there was somehow an exceptional need linked to the number of occupiers, rather than a reasonable need associated in some degree with the size of the house. The case of *Wallington v SSW & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942 showed it is necessary to consider whether the relevant purpose is incidental to the particular dwellinghouse in question rather than any dwellinghouse; also see *Holding v First Secretary of State* [2003] EWHC 3138 (Admin). I am unsure just how many members of the household would expect to be able to use the gym facilities at any one time that might justify a requirement for almost 40m² of space. The extended household referred to by the Appellant suggests an uncommonly large number of occupants of the small house at No. 61, again pointing to a desire for an unusually large gym area, in excess of the floor area of the 3 ground floor rooms of the house. The proposed storage area of 11.4m² would, according to the Council, be 4 to 5 times the amount required by the Nationally Described Space Standard for a comparable dwelling. That also seems unduly large and out of scale with the small house at No. 61. Nor

would there seem to be a need for a large area within the building to store garden equipment in what would be a much reduced remaining garden area.

11. The Appeal A proposal would be an excessively large building, purportedly intended for use by several persons at a time. Adjacent to such a small dwelling, it might suggest that the real purpose of the proposed building would not be an incidental use.

Conclusion

12. In my view, the proposed 61.34m² area large outbuilding at No. 61 could not reasonably be seen to be subordinate to the main dwellinghouse. Its size and its use are unlikely to be incidental to the enjoyment of the main dwellinghouse. It would not benefit from the concessions in Class E.(a) to the Order. Its construction and use would need planning permission. I consider the Council's interpretation of the Order limitations as applied in the present instance to have been correct. The Applicant's project for extensions at No. 61 Blessbury Road, Edgware HA8 0SU would not be development permitted by the Order. A certificate of lawful development is not issued.

FORMAL DECISION - Appeal A – our ref: APP/N5090/X/21/3274224

13. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the erection of a rear outbuilding for the purpose of a gym and storage room, (area 61.34m²), at No. 61 Blessbury Road, Edgware HA8 0SU was well founded and that the appeal should fail. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly.

Appeal B - APP/N5090/X/21/3274225 Building ground cover area 41m²

14. This later proposal, for a similarly located and purposed new building 5.6m wide, 7.24m deep and of 3m maximum height, would cover a ground area of just under 41m² – a little less than the 43.33m² by the house at No. 61.
15. The Council noted that an outbuilding serving a purpose as a home gym could be considered incidental to the enjoyment of the dwellinghouse. Similarly, a storeroom for garden tools or other items could be considered an incidental use of an outbuilding. However, they said such uses should remain subordinate. The Council remained unconvinced that the Appellant had provided information on how the layout of the proposed spaces would look nor why the gym needed to be such a substantial size. They said that while a home gym may well accommodate small pieces of training equipment, the floor space proposed suggested the outbuilding would be used to a degree that could not be considered incidental to the main dwellinghouse.
16. The Appellant said the gymnasium would be inadequate for his and his families' purposes. However, it would be larger than the main living room of the house at No. 61 and close to, but in my view within, the reasonable limitations implied by the application of Class E.(a), Part 1 of the Order. The intended purposes are fitting to the normal enjoyment of a residential dwelling and would be on a scale that ensured they can be said to be

reasonably required for use by occupiers of the main dwelling. Similarly, a home office purpose accords with the normal domestic use of a residential dwelling, where its scale is sufficiently modest to ensure it is subordinate to the main dwelling.

17. Having applied the same considerations to this much more moderate 41m² outbuilding Appeal B proposal, I consider it meets the requirement that it be *'incidental to the enjoyment of the dwellinghouse as such'*. A certificate of lawfulness should be issued.

Conclusion

18. In my view, the proposed 41m² area large outbuilding at No. 61 may be seen to be subordinate to the main dwellinghouse. Its use would be incidental to the enjoyment of the main dwellinghouse. It would benefit from the concessions in Class E.(a) to the Order.

FORMAL DECISION - Appeal B – our ref: APP/N5090/X/21/3274225

19. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the erection of a rear outbuilding for the purpose of a gym and office/storage room, (area 41m²), at No. 61 Blessbury Road, Edgware HA8 0SU was not well founded. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly and I issue a Certificate of Lawful Development for the development as applied for. It is attached to this decision, as is the relevant plan.

John Whalley

INSPECTOR



The Planning Inspectorate

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 (GENERAL DEVELOPMENT PROCEDURE) ORDER 1995: ARTICLE 24

IT IS HEREBY CERTIFIED that on 16 March 2021 the development described in the First Schedule hereto in respect of the premises specified in the Second Schedule hereto, would be lawful within the meaning of section 192(1)(b) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of an outbuilding at the rear of the house with flat roof and 4 no. of roof lights for use as a gym, office/storage at No. 61 Blessbury Road, Edgware HA8 0SU as shown on the attached plan would constitute a building operation that would not require planning permission.

John Whalley

INSPECTOR

Date: 15 August 2022

Reference: APP/N5090/X/21/3274225

First Schedule

The erection of an outbuilding at the rear of the house with flat roof and 4 no. roof lights for use as a gym, office/storage, (application 21/1556/192).

Second Schedule

The dwelling at No. 61 Blessbury Road, Edgware HA8 0SU.

IMPORTANT NOTES OVERLEAF

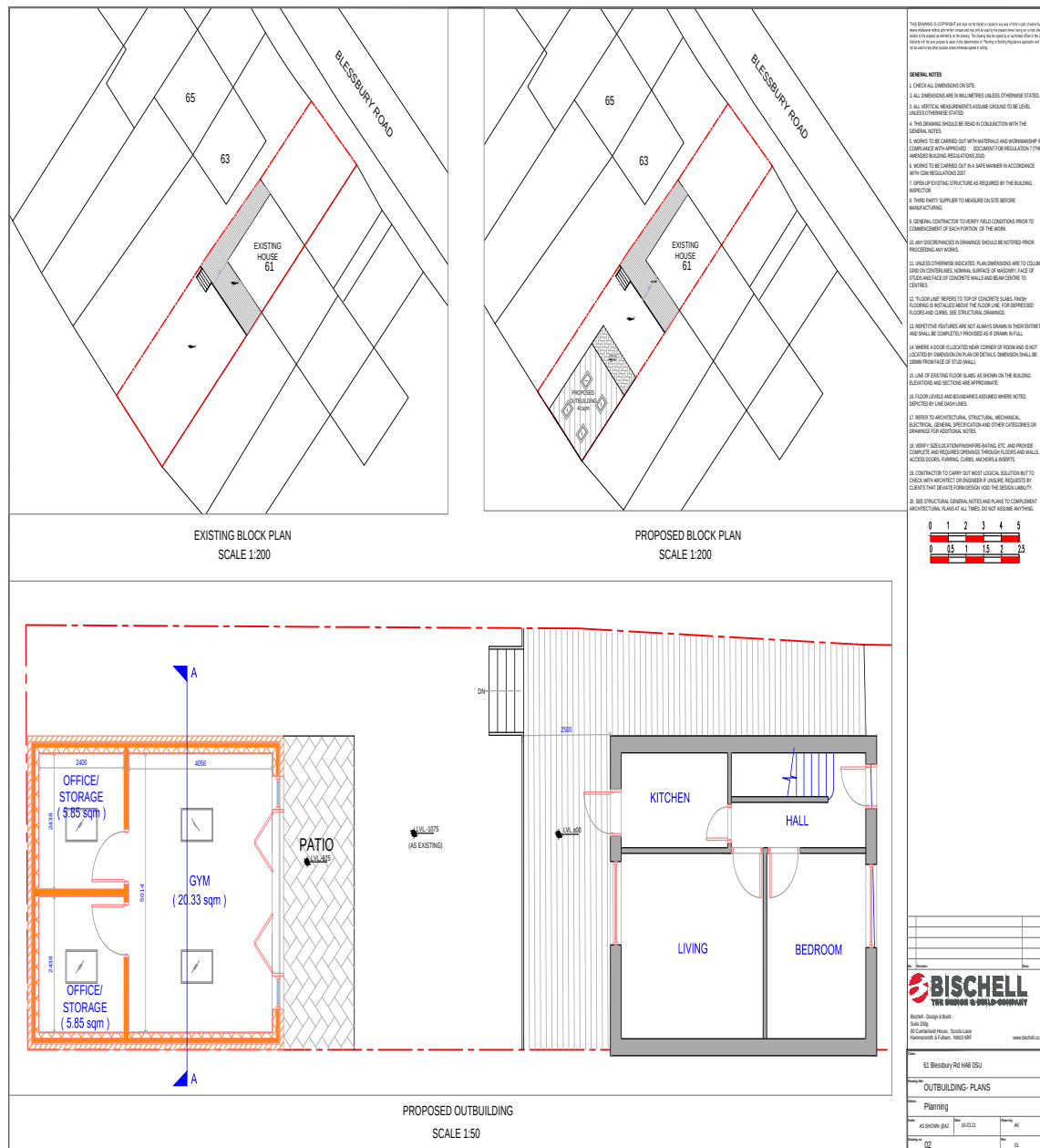
NOTES

1. This certificate is issued solely for the purpose of Section 192 of the Town and Country Planning Act 1990 (as amended).
2. It certifies that the development described in the First Schedule and specified in the Second Schedule would be lawful, on the certified date and, thus would not have been liable to enforcement action, under section 172 of the 1990 Act, on that date.
3. This certificate applies only to the development described in the First Schedule and specified in the Second Schedule and identified on the attached plan. Any development materially different from that described, or which relates to any other land, may result in a breach of planning control that is liable to enforcement action by the Local Planning Authority.
4. The effect of the Certificate is subject to the provision in Section 192(4) of the 1990 Act, as amended, which states that the lawfulness of any use, operations or other matter for which a certificate is in force under this section shall be conclusively presumed.

Lawful Development Certificate Plan

Appeal reference: APP/N5090/X/21/3274225 Date: 15 August 2022

The dwelling at No. 61 Blessbury Road, Edgware HA8 0SU



Plan attached to the Lawful Development Certificate – Dimensions as shown

John Whalley
INSPECTOR