



Appeal Decision

Site visit made on 11 September 2023

by H Davies MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 September 2023

Appeal Ref: APP/A5270/X/22/3307077

11 West Close, Greenford, Middlesex UB6 9PD

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended (the Act) against a refusal to grant a certificate of lawful use or development.
 - The appeal is made by Mr Juan Marcos Ravelo against the decision of London Borough of Ealing.
 - The application ref 223212CPE, dated 21 July 2022, was refused by notice dated 14 September 2022.
 - The application was made under section 191(1)(b) of the Act.
 - The development for which a certificate of lawful use or development is sought is 'one storey 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 existing operation which is found to be lawful.

Preliminary Matters

2. The application sought a certificate of lawful use or development (LDC) for an existing development. The burden of proof rests with the appellant and the appropriate test of the evidence is the balance of probabilities. The planning merits of the proposed development are not relevant to this appeal. Under s191(4) and s192(2) of the Act, the relevant date for ascertaining whether an existing development is lawful is the date of the LDC application.
3. I have used the description from the application form. The submitted plans show the outbuilding as containing a gym, storage and a small gym shower. The Council officer report also notes use as a home office.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development (LDC) was well founded.

Reasons

5. 11 West Close is a mid-terrace dwellinghouse, located within a plot that is considerably wider to the rear than to the front. The development to which the LDC application relates is an existing detached outbuilding which has been completed within the last 4 years. The application sought to demonstrate that the existing building was development permitted by Article 3(1) Schedule 2 Part 1 Class E of The Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

6. Class E(a) of the GPDO permits the provision within the curtilage of a dwellinghouse, of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such, subject to limitations and conditions. The Council accepts that the development is within the curtilage 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 matters further.
7. However, for the outbuilding to benefit from the provisions of Schedule 2 Part 1 Class E of the GPDO, it must be 'required for a purpose incidental to the enjoyment of the dwellinghouse'. 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'. 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. The use cannot be for a primary residential purpose, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
8. Case law¹ has established that in considering whether the purpose is incidental it is necessary to consider the purpose(s) for the outbuilding and the incidental quality in relation to the enjoyment of the dwellinghouse. It is also necessary to consider whether the building is genuinely and reasonably required to accommodate the use(s) or activities and consequently achieve that purpose. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the dwellinghouse. In assessing whether the outbuilding is genuinely and reasonably required for incidental purposes it is necessary to apply objective reasonableness in consideration of all the relevant facts and circumstances. Therefore, in each case, it is a matter of fact and degree as to whether facilities are incidental or not.
9. In this case, the outbuilding has a footprint of approximately 60 square metres and the floorplan shows the use as a gym and for storage, with a small shower to serve the gym. During my site visit I noted that the main area of the outbuilding which is stated on the plan as being a gym had a few items of gym equipment, but also appeared to be used as a home office and to store furniture. The area on the plan stated as being storage was being used for storage. The smaller area stated on the plan to be part of the gym was being used to store furniture and toys. The small gym shower contains a shower, toilet and sink.
10. The evidence provided, supported by observations made during my site visit, indicate that the purpose of the outbuilding is for a gym, storage and home office. These uses differ in character to the residential use of the dwelling but are carried out as a function of the enjoyment of the dwellinghouse, and the functional relationship is not uncommon. Although the size of the outbuilding is significant, the dwelling and its plot is big enough to accommodate a large family so the outbuilding size is not unreasonable for the purpose for which it is intended.

¹ Emin v Secretary of State for the Environment and Mid-Sussex Council [1989] JPL 909; Croydon LBC v Gladden [1994] 1 PLR 30

11. Accordingly, I find that on the balance of probabilities, the outbuilding is genuinely and reasonably required to accommodate the uses and the uses are incidental to the enjoyment of the dwellinghouse. The existing development therefore constitutes permitted development by virtue of Schedule 2 Part 1 Class E of the GPDO.
12. In the event that the use of the outbuilding materially changes in the future and requires planning permission, then the Council has enforcement powers to control any such unauthorised development.

Conclusion

13. For the reasons given above I conclude that, on the evidence now available, the Council's refusal to grant a certificate of lawful use or development in respect of an existing one storey outbuilding was not well-founded and the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

H Davies

INSPECTOR

Lawful Development Certificate

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191
(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 21 July 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and hatched in black on the plan attached to this certificate, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The one storey outbuilding at the appeal property complies with the terms of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015, as amended, and is therefore permitted development.

Signed

H Davies

Inspector

Date: 27 September 2023

Reference: APP/A5270/X/22/3307077

First Schedule

One storey outbuilding

Second Schedule

Land at 11 West Close, Greenford, Middlesex UB6 9PD

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 191 of the Town and Country Planning Act 1990 (as amended).

It certifies that the use / operation described in the First Schedule taking place on the land 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 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.

Plan

This is the plan referred to in the Lawful Development Certificate dated:
27 September 2023

by H Davies

Land at: 11 West Close, Greenford, Middlesex, UB6 9PD

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Scale: Not to Scale

