



Appeal Decision

Site visit made on 17 October 2023

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 3 November 2023

Appeal Ref: APP/A5270/X/22/3302754

78 Bennetts Avenue, Greenford UB6 8AX

- 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 Mr Walter Longato against the decision of the Council of the London Borough of Ealing.
 - The application Ref 220239CPL, dated 19 January 2022, was refused by notice dated 23 March 2022.
 - 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 described as outbuilding as gym store workshop in rear garden.
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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 operation which is found to be lawful.

Procedural Matter

2. The description of the proposed development in the banner heading is taken from the application form. For the Certificate however I have used the description on the Council's decision notice, in the interests of clarity. The appellant has used a similar description on their appeal form.

Main Issue

3. The main issue in this appeal is whether the Council's refusal of the LDC application was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (GPDO).

Reasons

4. It is for the appellant to show that the proposal is lawful, the relevant test of the evidence being on the balance of probability.
5. The appeal site contains an enlarged two storey semi-detached dwelling. The dwelling occupies a rectilinear plot. The proposal entails erecting a freestanding residential outbuilding towards the end of the rear garden. The outbuilding would have masonry walls under a flat roof. It would be 2.5 m high, 7 m in depth and at 6.6 m, would be of a similar width to the rear garden. Inside the outbuilding there would be three separate rooms, namely a workshop/hobby room, a gym and a garden store.

6. The GPDO at Article 3, Schedule 2, Part 1, Class E, grants planning permission within the curtilage of a dwelling for the erection of an outbuilding required for a purpose incidental to the enjoyment of the dwelling as such. The Government's Technical Guidance (TG) advises that a large range of buildings can fall within Class E, including garden sheds, other storage buildings and garages, as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling¹.
7. In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the persons living in it. Established case law confirms that in Class E, 'required' for an incidental purpose should be interpreted as 'reasonably required' and does not rest on the unrestrained whim of a householder. It also makes clear that, by itself, the physical size of an outbuilding, alone or in relation to a dwelling, might be important but is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose².
8. I am given to understand that the appellant maintains and repairs their own motorcycles and cycles and that they participate in races and events, which necessitates fitness training. The appellant's pastimes fall within the range of day-to-day domestic leisure and recreational activities that it is reasonable for occupiers of a dwelling to engage in, as does maintaining a domestic garden. The foregoing are subordinate activities connected with the running of the dwelling and the domestic or leisure activities of the persons living in it. In practice, there is likely to be limited space in the dwelling that would either be suitable or available to accommodate the above uses and there are no other permanent structures within the curtilage. Moreover, it is not uncommon for secondary activities such as a home workshop, home gym and garden store associated with a dwelling to be accommodated in a separate residential outbuilding in the curtilage.
9. The workshop/hobby room would occupy almost half of the outbuilding, the larger part of the other half being associated with the gym, with the garden store occupying the remainder. The workshop/hobby room would have a laying out table along part of one side, with a bench for a lathe at the rear and shelving for equipment and materials running almost the entire length of the other side. There would be limited space left in this room other than that which would be reasonable to store a modest number of two-wheeled vehicles, whilst also providing sufficient clearance to enable them to be worked on with relative ease. There would also be limited space left aside from that necessary for ease of access to and egress from the outbuilding and for ease of manoeuvring vehicles within it. Furthermore, it is entirely possible that any remaining space in this room would be used for keeping other repair and maintenance equipment, some items of which might be relatively large.
10. Exercise equipment in the gym would principally consist of a running machine, sit up bench and free weights area. The gym would allow little more space than is reasonable for comfortable use of the exercise equipment, for any associated activity such as warming up and for circulation, as well as to accommodate an associated shower/WC facility of modest size. The garden store would provide space for a lawn mower and roller and there would be shelving for gardening sundries and an area for hanging garden tools. The size of this room would also be little more than that necessary to accommodate the above garden-related items, whilst allowing for ease of access and for circulation. If any of

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019.

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

the rooms within the outbuilding were to be much smaller it is highly likely that they would be congested in relation to the activities that it is intended to accommodate and as a result would be significantly more awkward to use. For these reasons, in my view the amount of floor space provided by the outbuilding is commensurate with what would reasonably be required having regard to the intended uses and it is not overly large.

11. The TG also advises that the term 'incidental' does not 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. It is highly likely that the shower/WC within the gym would be closely connected with and support the incidental use of the outbuilding. There would be a reasonably lengthy outside walk up the rear garden to access the dwelling from the outbuilding. A shower/WC facility would afford greater convenience for the appellant when using the gym, particularly during hours of darkness or periods of inclement weather. It is not unreasonable for occupiers of the dwelling to require convenient access to a shower/WC, for example to freshen up after exercising. Consequently, the shower/WC would be subordinate to the incidental use of the outbuilding within Class E and would not involve the provision of primary living accommodation.
12. The permission granted by Class E of the GPDO is also subject to the limitations set out in paragraphs E.1 to E.3. I am satisfied that the proposal meets the relevant size, height and locational limitations in paragraph E.1 and that paragraphs E.2 and E.3 do not apply. The Council did not seek to argue otherwise.
13. Accordingly, on the balance of probability the appellant has shown that the outbuilding would not be in excess of what would reasonably be required for purposes incidental to the enjoyment of the dwelling as such and it is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class E.

Conclusion

14. 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 proposal 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.

Stephen Hawkins

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 19 January 2022 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:

On the balance of probability, planning permission is granted for the proposal (as shown on drawing no 01 Rev A) by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Stephen Hawkins

Inspector

Date 3 November 2023

Reference: APP/A5270/X/22/3302754

First Schedule

Single storey detached rear garden outbuilding for use as a gym/store/workshop

Second Schedule

Land at 78 Bennetts Avenue, Greenford UB6 8AX

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: 3 November 2023

by Stephen Hawkins MA, MRTPI

Land at: 78 Bennetts Avenue, Greenford UB6 8AX

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Scale: Not to scale

