



Appeal Decision

Site visit made on 26 September 2023

by Martin Allen BSc (Hons) MSc MRTPI

an Inspector appointed by the Secretary of State

Decision date: 11 December 2023

Appeal Ref: APP/T5150/X/22/3303757

29 Brookfield Crescent, Harrow, Brent HA3 0UT

- 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 & Mrs John-Phillip against the decision of London Borough of Brent.
- The application ref 22/1306, dated 8 April 2022, was refused by notice dated 1 June 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 the erection of outbuilding.

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.

Applications for costs

2. The appellant indicates within the Statement of Case that an application for costs will be made under separate cover. No application has been made and so I do not consider this matter further.

Main Issue

3. The main issue is whether the decision of the Council to refuse the application for a certificate was well founded, having regard to the purposes for which the outbuilding is required, having regard to its proposed scale, and ground levels within the site.

Reasons

4. Class E, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) permits the provision within the curtilage of a dwellinghouse of, amongst other things, any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. These buildings are permitted subject to certain conditions and limitations. In this case, the Council's concerns stem from whether the building can be regarded as being used for purposes incidental to the enjoyment of the dwellinghouse as a consequence of its size, as well as whether the height of the building accords with the relevant limitation.
5. The appellant seeks to construct an outbuilding in the rear garden of the property. The building would be L-shaped, measuring 8.49 metres (m) by 7.27m, measured along the longest elevations. It would have a flat roof, with a maximum height of 2.5m. A total area of approximately 52 square metres (m²)

would be covered, with an internal floor area of approximately 45m². The details show that the building would accommodate a summer house/games room, together with a store and office.

Purpose for which the outbuilding is required and scale

6. The Council sets out within its Delegated Report, that the existing dwelling has a footprint of approximately 55m², and therefore the proposed building would have almost the same footprint. On this basis, it considers that the size of the building is not proportionate to the size of the dwelling, nor the site overall given a garden area of approximately 268m².
7. Whilst accepting the figures set out by the Council, on balance I do not consider that scale of each of the facilities within the building to be excessive given their proposed use. The scale of the building in this instance is therefore genuinely and reasonably required to accommodate the proposed facilities, notwithstanding its overall size in relation to the existing dwelling. Consequently, I am satisfied that the proposed outbuilding is required for purposes incidental to the enjoyment of the host dwelling.

Ground levels

8. As far as is relevant to this appeal, paragraph E.1(e) states that development is not permitted if:
 - (e) *the height of the building, enclosure or container would exceed—*
 - (i) *4 metres in the case of a building with a dual-pitched roof,*
 - (ii) *2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or*
 - (iii) *3 metres in any other case;*
9. The proposed building would be within 2m of a boundary of the site and thus the relevant consideration is whether the height would exceed 2.5m.
10. The Council contend that the submitted drawings do not depict the current ground levels or presence of steps clearly and, on this basis, it is not possible to accurately measure the height of the proposed building.
11. Article 2(2) of the GPDO states that:

"(2) Unless the context otherwise requires, any reference in this Order to the height of a building or of plant or machinery is to be construed as a reference to its height when measured from ground level; and for the purposes of this paragraph "ground level" means the level of the surface of the ground immediately adjacent to the building or plant or machinery in question or, where the level of the surface of the ground on which it is situated or is to be situated is not uniform, the level of the highest part of the surface of the ground adjacent to it."
12. At the time of my visit, I observed that the rear garden to the property was not level, with ground levels rising to the rear, where there was an existing shed, children's play equipment and area of decking. While there were steps leading up to a level area, it was clear that the shed and play equipment were sited on a level area of the garden, that sits at a higher level than the remainder. I consider this to be the natural ground level at this point of the garden. While

there appeared to be a small drop in levels directly underneath the area of decking, this was not substantial and most of the ground level in this area was the same as that as beneath the shed and play equipment.

13. The submitted plans clearly state that the building would be no higher than 2.5m above the existing finished ground level. In this light, I find that the height of the building would accord with paragraph E.1(e).

Overall finding

14. In light of the above, I find that the proposal would comply with Class B, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.

Other Matters

15. There is reference to other examples of outbuildings that have been considered by the Council when making their decision. Given that the consideration of this case is highly fact specific and turns on the individual circumstances of the proposal, these examples have little influence on my decision.

Conclusion

16. 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 erection of outbuilding 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.

Martin Allen

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 8 April 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:

The development is for purposes incidental to the enjoyment of the dwellinghouse and accords with the height requirements as set out in paragraph E.1(e), which states that development is not permitted if:

- (e) *the height of the building, enclosure or container would exceed—*
 - (i) *4 metres in the case of a building with a dual-pitched roof,*
 - (ii) *2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or*
 - (iii) *3 metres in any other case;*

The proposal would comply with Class B, Part 1 of Schedule 2 of The Town and Country Planning (General Permitted Development) (England) Order 2015, and thus is permitted development.

Signed

Martin Allen

INSPECTOR

Date: 11 December 2023

Reference: APP/T5150/X/22/3303757

First Schedule

Erection of outbuilding

Second Schedule

Land at 29 Brookfield Crescent, Harrow, Brent HA3 OUT

IMPORTANT NOTES – SEE OVER

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: 11 December 2023

by Martin Allen BSc (Hons) MSc MRTPI

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Scale: Not to Scale

