



## Appeal Decision

Site visit made on 8 December by S Wilson LL.B. MSc MRTPI

**Decision by A U Ghafoor BSc (Hons), MA MRTPI**

**an Inspector appointed by the Secretary of State**

**Decision date: 20 December 2023**

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**Appeal Ref: APP/T5150/X/23/3315144**

**9 Coverdale Road, London, NW2 4DB**

- 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 proposed lawful use or development (LDC).
  - The appeal is made by Mr. Mohd Alsuwaidi against the decision of the Council of the London Borough of Brent.
  - The application ref 22/2993, dated 29 August 2022, was refused by notice dated 19 October 2022.
  - The application was made under section 192(1)(b) of the Act.
  - The development for which a LDC is sought is described as: ‘...proposed single storey outbuilding in rear garden for the incidental enjoyment of the occupants of the dwelling house.’
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### Decision

1. The appeal is dismissed.

### Appeal Procedure

2. The site visit was undertaken by a representative of the Inspector whose recommendation is set out below and to which the Inspector has had regard before deciding the appeal.

### Main Issue

3. Whether the Council’s refusal to issue a certificate was well founded.

### Reasons for the Recommendation

4. The Council’s reason for refusal was that the proposal would fail to comply with the provisions of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO 2015”) Schedule 2, Part 1, Class E.
5. To be successful in this appeal the appellant should show, on the balance of probabilities, that the development would fall within the provisions of the GPDO 2015 Schedule 2, Part 1, Class E (“Class E”) in that the proposed outbuilding would comply with its limitations, be within the curtilage of the dwellinghouse and for a purpose incidental to the enjoyment of the dwellinghouse. The Council appears to accept that the proposal is within the curtilage of No.9 and would not exceed the limitations set out in E.1. I have no reason to disagree.
6. The Council report sets out that the proposed development would have a 45m<sup>2</sup> footprint and that the original main dwelling is about 150m<sup>2</sup>. The original garden is approximately 350m<sup>2</sup>. There is no dispute between the parties regarding the dimensions of the proposal.

7. Case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. In this appeal, the onus is upon the appellant to show that the proposed outbuilding is required for an incidental purpose. Whether the basic requirement in Class E is satisfied depends on a fact and degree assessment.
8. The Courts have held that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.
9. There is no disagreement that the proposed uses of the building as a gymnasium, playroom, sauna, toilet, and shower are all uses that may be considered incidental to a residential use. However, the Council state that the cumulative size and scale of the proposed development, taking account of its function, is unreasonably large.
10. The dwellinghouse is a large and detached family home. The proposal plan labels the rooms as gymnasium, playroom, sauna. The plan also clearly indicates a toilet and a shower room. The proposed toilet, shower and sauna are set out in what appears to be two rooms. The gymnasium or playroom appears to be large and makes up the rest of the floorplan. Whilst the proposed use could be considered incidental to the large family dwelling house, there is no plausible explanation as to why a large gymnasium and/or playroom of this size is required. There is no explanation of the amount and type of gymnasium and/or playroom equipment that would be installed, nor is there an explanation of the number of people likely to utilise the space. It is unclear why space in the large house cannot be used. Consequently, it is unclear why such a large gymnasium and/or playroom is required, and I do not consider its size would be modest and commensurate with a use incidental to the residential use of the dwellinghouse.
11. I consider that the nature and scale of the proposed outbuilding would not comply with the basic requirement of Class E. As such, the Council's refusal to grant a LDC was well-founded, and the appeal should fail.

### **Other Matters**

12. The appellant states that the Council has failed to exercise its duties under the Human Rights Act nor exercised its Public Sector Equality Duty. The concern is that the protected characteristics of the appellant with respect to their religion and belief should be taken into the determination of this appeal. However, in the context of a s195 appeal, submissions about the planning merits of the proposed outbuilding are irrelevant.

### **Conclusion and Recommendation**

13. For the reasons given above and having had regard to all other matters raised, I recommend that the appeal should be dismissed.

*S. Wilson*

APPEAL PLANNING OFFICER

**Inspector's Decision**

14. I have considered all the submitted evidence and the Appeal Planning Officer's report and on that basis the appeal is dismissed.

*A U Ghafoor*

INSPECTOR