



Appeal Decision

Site visit made on 18 June 2024

by E Brownless BA (Hons) Solicitor (non-practising)

an Inspector appointed by the Secretary of State

Decision date: 09 July 2024

Appeal Ref: APP/F5540/X/23/3317310

44 Ellington Road, Hounslow, Feltham TW13 4RE

- 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 "LDC").
 - The appeal is made by Dr Katarzyna Czysz against the decision of the Council of the London Borough of Hounslow.
 - The application ref: P/2022/3851, dated 1 December 2022, was refused by notice dated 2 February 2023.
 - 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 the erection of an outbuilding for ancillary use of home office/gym.
-

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 Matter

2. I have amended the description of development for which a LDC is sought to remove the words '(resubmission of application 00394/44/LAW3)' as this is not an act of development.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC was well-founded. This issue turns on whether the proposed development would have constituted permitted development by virtue of the provisions of Article 3(1) and Class E of Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)("the GPDO").

Reasons

4. An application under section 191(1)(b) of the Act seeks to establish whether any operations which have been carried out in, on, over or under land are lawful. Section 191(2)(a) and (b) set out that uses and operations are lawful at anytime if: i) no enforcement action may be taken in respect of them (whether because they did not involve development or require planning permission or because the time for enforcement action has expired or for any other reasons); and, ii) they do not constitute a contravention of any enforcement notice then in force.
5. Section 191(4) sets out that if on application under this section, the local planning authority are provided with information satisfying them of the

lawfulness at the time of the application of the use, operations or other matter described in the application, they shall issue a certificate to that effect. Planning merits form no part of the assessment of an application for a LDC which must be considered in light of the facts and the law.

6. Article 3(1) of the GPDO grants planning permission for the classes of development set out in Schedule 2 to the Order. At Part 1, it includes Class E(a), the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for the purpose incidental to the enjoyment of the dwellinghouse as such, subject to the prescribed limitations and conditions as set out within that class.
7. There is no suggestion that the appeal scheme contravenes the limitations set out in paragraphs E.1, E.2 and E.3 of the GPDO and I see no reason to conclude otherwise.
8. To succeed in this appeal, the appellant must show, on the balance of probability that the proposed development would have constituted permitted development by virtue of the GPDO at the date of the LDC application, namely 1 December 2022. As established in *Gabbitas V SSE & Newham LBC* [1985] JPL 630, an appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and ambiguous, it should be accepted.
9. The Council refused the application on the basis that, by reason of the scale and arrangement of the internal accommodation and the inclusion of primary living accommodation in the form of a bathroom, the outbuilding was not considered to be incidental to the use and enjoyment of the main dwelling.
10. As established in the case of *Emin V SSE & Mid Sussex DC* [1989] JPL 909, consideration of the term 'incidental to the enjoyment of the dwellinghouse' means that there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder. The test is whether the appeal building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.
11. The host dwelling is a two-storey end of terrace property with accommodation space within the roof structure. It is sited within a spacious sized plot with a long rear garden. The outbuilding is a single storey structure sited at the end of the rear garden. It has a floor space of approximately 48.4 square metres and it is subdivided into three rooms: a home office, a gymnasium (the "gym") and a toilet. It is not in dispute that a home office and a gym could be uses that are incidental to the enjoyment of the dwelling.
12. The Council has suggested that there is a lack of supporting information, beyond the labelling of drawings, to demonstrate that there is a genuine and reasonable requirement for the size of the outbuilding and the uses. However, the submitted information addresses these points in greater detail. The appellant sets out their family's need for a three bedroom property and the works which have been carried out to extend the property. They go on to explain that, despite undertaking works to extend the property, there is insufficient space within the main dwelling which has therefore necessitated external space for a home office.

13. The appellant describes having a computer-based job and permanently working from home due to working long hours, split shifts and unsocial hours. Early starts and late finishes are stated to be commonplace due to the nature of the job and the benefit of working from home enables an efficient use of time and avoids the need to travel on public transport during unsociable hours. The appellant's partner also works from home for 3 to 4 days of the week. For similar reasons, a home gym is stated to be required due to the appellant's working pattern and constraints on their time in order to improve their fitness and mental health.
14. A home gym could reasonably be expected to accommodate a running machine, some storage to store exercise equipment and a space for exercising. The area provided for the home gym has a reasonably modest footprint of approximately 14.3 square metres and given the items of equipment and free space required for exercising that it is intended to accommodate, I find that the area provided is not excessive.
15. The home office comprises an area of some 21.6 square metres and the submitted plan shows that it would be laid out with two desks and drawers, a filing cabinet, table and a printer. It would also include a mini fridge and a kettle which are labelled as 'welfare' on the plan. The space is sufficient to accommodate the stated furniture and items in addition to a generous area of circulation space. However, as the space is intended to be dedicated to the home working of two adults and provides access to the home gym and toilet, I do not find it to be excessively spacious.
16. A third room, labelled as 'W/C' on the plan, appeared unfinished at the time of my visit. The appellant states that when the building was originally constructed, this room was a shower room and that they were advised to only provide a toilet. As a result, shower fittings had been removed prior to the making of the LDC application.
17. While the basis upon which the application is made, is that it would include only a toilet, the GPDO does not grant retrospective planning permission. The development would therefore need to have been permitted by the GPDO in force when the development was begun and must have complied with the conditions and limitations. Since the building was constructed with a shower, it is therefore necessary for me to consider whether the inclusion of a shower would have meant it could not be considered as incidental to the enjoyment of a dwellinghouse as such.
18. A bathroom would usually be comprised within the everyday living facilities of the dwelling, and thus be part of the primary living accommodation. The Technical Guidance – Permitted development rights for householders (2019), provides assistance in the interpretation and application of the GPDO. It explains that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained living accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom or kitchen.
19. An individual using the gym is likely to wish to shower before going on to do something else, whether that is in the main dwelling or the outbuilding. Notwithstanding the shower has now been removed, it is likely to have been used alongside the gym and so, as a matter of fact and degree, it would have been incidental to the enjoyment of the dwelling house.

20. Whilst the outbuilding is set away from the dwelling, it is sufficiently close that the occupants can easily walk across the garden between the two buildings particularly given the existence of a pedestrian path. Nevertheless, I find that it is not unreasonable to provide a toilet so that homeworkers or people who exercise within the building may use it without the need to go into the main dwelling, particularly if occupants of the main dwelling are likely to be disturbed by their presence due to it being late at night, or early in the morning.
21. The Council suggests the external footprint of the outbuilding is larger than the original footprint of the main house, which measured around 37 square metres. Size is a relevant but not conclusive factor in determining whether the appeal building would be incidental to the use of the main dwelling house. The word 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwellinghouse.
22. The host dwelling has been extended in recent years and it is not clear from the evidence exactly what the size of the host dwelling was at the time the outbuilding was constructed. Nevertheless, even if I were to consider the original dwelling, it is a two storey property and so the single storey outbuilding would have appeared subordinate in height. Furthermore, when considering both floors of the property, the overall floor space provided within the host dwelling would have been greater than that provided within the outbuilding.
23. Taking all matters into consideration, I consider that the appeal building is genuinely and reasonably required and necessary to accommodate the activities and as such, the use of the outbuilding, in the context of the planning unit, is intended to, and will remain subordinate to the main use of the property as a dwellinghouse.

Other Matters

24. My attention has been drawn by the Council to a number of previous appeal decisions. In the appeal at Little Park Drive¹, the Inspector concluded that the mere giving of labels to a building did not sufficiently explain the intended purpose of the building as storage and a gym. However, I have found the appellant's evidence to be detailed in this respect and it therefore differs to the submitted appeal decision and is not comparable to the appeal scheme before me. A further appeal decision² has been referred to, however, the submitted extract simply sets out the approach to be followed with regards to the case of *Emin*, which I have referred to above.

Conclusion

25. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant an LDC in respect of the erection of an outbuilding for ancillary use of home office/gym was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the Act.

E Brownless

INSPECTOR

¹ Appeal Reference: APP/F5540/X/14/3000316

² Appeal Reference: APP/F5540/X/14/2216912



The Planning Inspectorate

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 1 December 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The erection of an outbuilding for ancillary use of home office/gym was permitted development by virtue of Article 3(1) and Class E of Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended).

Signed

E Brownless

Inspector

Date: 09 July 2024

Reference: APP/F5540/X/23/3317310

First Schedule

Outbuilding for ancillary use of home office/gym in accordance with the following drawings: Drawing No 005 Revision No 03 -Existing/Proposed Plans.

Second Schedule

Land at 44 Ellington Road, Hounslow, Feltham, TW13 4RE

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 /operations described in the First Schedule taking place on the land specified in the Second Schedule was /were 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.

Scale: Not to Scale

