



Appeal Decision

Site visit made on 14 June 2025

by **A U Ghafoor BSc (Hons) MA MRTPI FCMI fCMgr**

an Inspector appointed by the Secretary of State

Decision date: 18th June 2025

Appeal Ref: APP/N5090/X/24/3348610

11 Green Lane, Edgware HA8 7PL

- 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 (LDC).
- The appeal is made by Mr and Mrs Bernstein against the decision of the Council of the London Borough of Barnet.
- The application Ref 24/1400/192, dated 8 April 2024, was refused by decision dated 30 May 2024.
- The application was made under section 192(1)(b) of the Act.
- The proposed development for which a certificate of lawful use or development is sought is new outbuilding ancillary to house.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the proposed new outbuilding ancillary to the house which is found to be lawful.

Inspector's reasons

2. The appeal needs to be considered in the context of the terms of development permitted by article 3, schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 as amended. It is evident from the reason for refusing the LDC and the associated bundle that the building in question would meet all the limitations and conditions set out in paragraph E.1 of Class E. I have no reason to question this. The Council's decision to refuse the application is founded on the claim that the building is not required for a purpose incidental to the enjoyment of the dwellinghouse as such, which is the wording contained within sub-paragraph (a) of Class E. The appellant disputes this arguing that the outbuilding would satisfy this test being genuinely required for purposes incidental to the enjoyment of the dwellinghouse.
3. Case law provides authority for how "incidental" should be interpreted by decision makers. These authorities indicate that things like games rooms, gymnasiums and utility areas are capable of being a type of use that is incidental to the enjoyment of a dwellinghouse. In the leading case of *Emin*¹ it was held that it was wrong to conclude that an outbuilding could not be said to be required for a use reasonably incidental to the enjoyment of a dwellinghouse as such because it would provide more accommodation for secondary activities than the dwelling provided for primary activities. Nevertheless, the test must retain an element of objective reasonableness and should not be based on the unrestrained whim of an occupier². On the other hand, a hard objective test should not be imposed to frustrate the reasonable aspirations of a particular owner or occupier so long as they are sensibly related to the

¹ *Emin*¹ v SSE [1989] JPL 909.

² *Wallington v SoS for Wales* [1990] 62 P & CR 150; *Holding v FSS* [2004] JPL 1405; *Croydon LBC v Gladden* [1994] 1PLR 30.

enjoyment of the dwelling. These judgments and the findings therein serve to illustrate that with each case it is a matter of fact and degree based on the circumstances³.

4. The appeal parties talk extensively about size and comparison with original or extended dwelling. To my mind, the discussion reveals a deep misunderstanding of the correct approach. Firstly, there is no absolute limit in percentage terms as to how large the outbuilding can be compared with the host property. It is necessary to consider proposals in the context within which they would be situated; an outbuilding that may be considered incidental to the enjoyment of a substantial dwelling with many occupants and large grounds may not be incidental if situated in the garden of a small cottage with a single occupant. Size alone is not necessarily a determining factor and a wide range of outbuildings, for different purposes may be permitted under class E, depending on the specific circumstances.
5. Secondly, the assessment to be made is not whether the outbuilding is incidental to the original or extended dwellinghouse but whether it is incidental to what existed on the date that the LDC application was made. This interpretation is consistent with the actual wording of the relevant passage of the GPDO. For example, class E(a) refers to "...a purpose incidental to the enjoyment of the dwellinghouse as such...". The word "original" is not included in this clause but is in some of the requirements that follow in paragraph E.1. The dwellinghouse as such is that existed when the application was made on 8 April 2024.
6. Turning to the particulars of this case, the proposed outbuilding would measure 6.45 m deep, 9.356 m wide and have a maximum flat roof height of 2.5 m. It is illustrated in drawing no. ST_MAR 24_11 GRE_003 rev B. The Council say the proposal has evolved over time because previous plans included a room dedicated to television, but that is not indicative of not satisfying class E(a). The proposed outbuilding would have an internal floor area of about 50 sqm and would be used as a home study, gym with WC. The outbuilding would have a smaller footprint than the semi-detached dwelling it would serve and be much less than the total floor area of the extended house. In terms of a pure comparison based on area there is no reason to find that the outbuilding would not be both subordinate and incidental to the present property. I am therefore satisfied that the size of the outbuilding in relation to the size of the house and its use would be within the bounds of objective reasonableness when considering whether it is incidental.
7. As the notes attached to the LDC explain, the certificate applies only to the extent of the operation described in the First Schedule. Any operation or use which is materially different from that described may result in a breach of planning control which is liable to enforcement action by the local planning authority.
8. For the reasons given above I conclude, on the evidence now available and applying the correct approach and balance of probability test, the Council's refusal to grant a LDC in respect of the 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.

A U Ghafoor

INSPECTOR

³ *Peche d'or Investments v SSE [1996] JPL 311.*

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 2024 the matter described in the First Schedule hereto, constituting new outbuilding ancillary to the house, in respect of the land specified in the Second Schedule hereto and edged 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:

Permitted development by virtue of article 3, schedule 2, part 1, class E of the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 as amended. For this reason, no enforcement action may then be taken in respect of the proposed outbuilding, as illustrated drawing no. ST_MAR 24_11 GRE_003 rev B. The proposed outbuilding does not constitute a contravention of any of the requirements of any enforcement notice then in force.

Signed

A U Ghafoor

INSPECTOR

Date: 18th June 2025

Reference: APP/N5090/X/24/3348610

First Schedule

New outbuilding ancillary to the house.

Second Schedule

Land edged as shown on the plan attached to this certificate and identified as 11 Green Lane, Edgware HA8 7PL.

IMPORTANT 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 proposal 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 proposal described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operation or use 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: 18th June 2025

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Land at: 11 Green Lane, Edgware HA8 7PL.

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Scale: Do not scale.

