

Appeal Decision

Site visit made on 29 August 2025

by D A Hainsworth LL.B(Hons) FRSA Solicitor
an Inspector appointed by the Secretary of State

Decision date: 25th September 2025

Appeal Ref: APP/J1915/X/23/3329462

Sandpit Lodge, Bedwell Avenue, Essendon, Hatfield AL9 6HN

- The appeal is made by Liam Griffin of Essendon Property Ventures Ltd under section 195 of the Town and Country Planning Act 1990 against a refusal by East Hertfordshire District Council to grant a lawful development certificate.
 - The application Ref: 3/23/0716/CLPO, dated 7 April 2023, was refused by notice dated 27 June 2023.
 - The application was made under section 192(1)(b).
 - The development for which the certificate is sought is "Erection of single-storey side and rear extensions; creation of basement and erection of single-storey detached outbuilding".
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Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the operations described in the application, which are considered to be lawful if begun at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the Council's refusal of the application is or is not well-founded. The assessment is based on the lawfulness of the proposed development at the time of the application. The planning merits of the development are not relevant to the appeal and there is no planning application before me.
 3. The Council accepted that the erection of the side and rear extensions would be permitted development, but refused to grant a certificate for the basement and the outbuilding for the following reasons:
 - "1. The proposed basement is contrary to Schedule 2, Part 1, Class A of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Planning permission is therefore required.
 - 2. The proposed outbuilding is contrary to Schedule 2, Part 1, Class E (a) of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended). Planning permission is therefore required."
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4. More details relating to the decision to refuse the certificate for the basement and the outbuilding are set out in the Delegated Officer Report. The Report asserts that case law supports the decision.
5. The Report states that the Order is silent in regard to the creation of basements. It maintains that the basement proposed in this instance would constitute an engineering operation that is not permitted by the Order.
6. Class E (a) authorises the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of the dwellinghouse as such. The Report acknowledges that the activities proposed to be carried out in the outbuilding (a home gym, a study and a shower room) may be acceptable individually as being incidental, and that the detailed limitations set out in Class E.1, E.2 and E.3 would all be complied with, but it maintains that the outbuilding as a whole would not be incidental for the reasons I have summarised below:
 - The house has a total footprint of approx. 72.9sqm (original house) and 80sqm (with the conservatory). The outbuilding would have a footprint of approx. 80sqm. It would therefore have a footprint greater than that of the original house and the same size as the existing house with the conservatory. It would exceed what may reasonably be considered as incidental to the enjoyment of the house, especially when compared to the original size of the dwelling.
 - The activities proposed to be carried out in the outbuilding, when taken together, would occupy an unreasonable amount of space.
 - As a matter of fact and degree, the outbuilding would not come within the terms of Class E (a).
7. The appellant maintains that:
 - It has been established in a number of appeal decisions and Article 4 Directions (examples of which have been provided by the appellant) that basement extensions are permitted development, since an extension downwards constitutes an enlargement, improvement or other alteration of a dwellinghouse within Class A.
 - A gym and a study are established as being uses incidental to the enjoyment of a dwellinghouse. There are no limitations on the footprint of an outbuilding apart from the '50% rule'. The physical size of an outbuilding, alone or in relation to the dwelling, is not conclusive. In support, the appellant refers to case law, the Government publication *Permitted development rights for householders: technical guidance*, appeal decisions and lawful development certificates already granted by the Council and neighbouring local authorities.
8. I have assessed these issues in the following paragraphs.

The basement
9. My understanding of the meaning of the words "enlargement, improvement or other alteration of a dwellinghouse" in Class A is that they are capable of permitting the addition of a basement, but there is a point where the works of

excavation, underpinning and support needed for the basement can become an engineering operation that requires planning permission. Whether it does so or not is a planning judgment for the decision-maker to reach as a matter of fact and degree depending on the specific circumstances that arise in each case.

10. Sandpit Lodge is a detached house in its own grounds. The basement would be constructed directly under the existing ground-floor rooms. The access stairs to it would be provided by re-configuring the existing hall on the ground floor, where there are at present stairs to the first floor, a toilet and a passage. It would be necessary to excavate material and probably to underpin walls and provide support, but the works would not change the external appearance of the house or its grounds at all and there would be no impact on neighbouring properties. As a matter of fact and degree, I do not consider that in this instance the engineering works needed for the basement would amount to an activity of substance that is separate from the enlargement, improvement and alteration of the house.

The outbuilding

11. My understanding of the principles that apply to the phrase “any building ... required for a purpose incidental to the enjoyment of the dwellinghouse as such” in Class E (a) is as follows: -
- The concept of Class E (a) is broad and a wide range of incidental purposes is permitted.
 - The incidental purposes must be connected with the running of the house or the domestic, recreational or leisure activities of its occupiers and the building must be required for those purposes, but it is primarily for the occupiers to decide what incidental purposes are to be enjoyed in the building.
 - In order to assess whether the purposes are incidental to the enjoyment of the house, their nature and scale are to be considered. There should be an element of subordination in land use terms in relation to the enjoyment of the house itself. The size of the outbuilding in comparison to the size of the house is a relevant, but not a decisive, factor. The comparison should be with the whole of the house, not just with its footprint, since this is the “dwellinghouse as such” which Class E (a) relates to.
 - The issues are to be decided with an element of objective reasonableness, as a matter of fact and degree in each case.
12. Sandpit Lodge has three bedrooms and should be assumed to have a potential occupancy commensurate with a house of this size. It is reasonable for its residents to require an outbuilding for their domestic, recreational and leisure activities. The Council have accepted that the individual purposes for which the proposed outbuilding is required would be incidental to the enjoyment of the house and that the limitations set out in Class E.1 relating to the ground coverage and size of the outbuilding would be complied with.
13. Neither the combined amount of space that the outbuilding would provide for the residents’ activities nor the size and scale of the outbuilding would be unreasonable having regard to the number of residents who might use it and

the overall size of the house. The outbuilding would be subordinate in land use terms in relation to the enjoyment of the house itself. As a matter of fact and degree, the outbuilding is in my view required for a purpose incidental to the enjoyment of the dwellinghouse as such.

Conclusions

14. For the reasons given above, I am satisfied that the Council's refusal of the application is not well-founded, because the basement is permitted by Class A and the outbuilding is permitted by Class E. The appeal has therefore been allowed and as required by section 195(2) the appellant has been granted a lawful development certificate under section 192.

D.A.Hainsworth

INSPECTOR



Certificate of Lawful Development

APPEAL REFERENCE APP/J1915/X/23/3329462

TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND)
ORDER 2015: ARTICLE 39 & SCHEDULE 8

IT IS CERTIFIED that on 7 April 2023 the operations described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown edged and hatched in black on the plan attached to this certificate would be lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990, for the following reason:

The operations were permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, Article 3(1) and Schedule 2, Part 1, Classes A and E, subject to the conditions set out in A.3.

D.A.Hainsworth

INSPECTOR

Dated: 25th September 2025

First Schedule

The erection of single-storey side and rear extensions; the creation of a basement; and the erection of a single-storey detached outbuilding.

Second Schedule

Sandpit Lodge, Bedwell Avenue, Essendon, Hatfield AL9 6HN

Notes

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990.
2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule would be lawful on the specified date and, therefore, would not have been liable to enforcement action under Part VII of the 1990 Act on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations that are materially different from those described or which relate to any other land may render the owner or occupier liable to enforcement action.
4. The effect of the certificate is qualified by section 192(4) of the Act, which states that the lawfulness of the operations is only conclusively presumed where there has been no material change, before the operations are begun, in any of the matters relevant to determining such lawfulness.



Plan attached to Certificate of Lawful Development

Sandpit Lodge, Bedwell Avenue, Essendon, Hatfield AL9 6HN

Appeal reference: APP/J1915/X/23/3329462

This is the plan attached to the Certificate of Lawful Development
dated: 25th September 2025

D.A.Hainsworth

Inspector

