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## Appeal Decision

Site visit made on 18 October 2025<sup>1</sup>

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

an Inspector appointed by the Secretary of State

Decision date: 24 October 2025

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**Appeal Ref: APP/N5090/X/23/3333812**

**43 Victoria Road, London EN4 9PH**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal in part to grant a certificate of lawful use or development (LDC).
  - The appeal is made by Mr Bekim Kelmendi against the decision of the Council of the London Borough of Barnet.
  - The application Ref 23/4439/192, dated 16 October 2023, was refused in part by notice dated 13 November 2023.
  - The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended ("the 1990 Act").
  - The use for which a certificate of lawful development is an outbuilding designed to meet permitted development requirements.
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### Decision

1. The appeal is dismissed.

### Reasons

2. The onus of proof is firmly upon the appellant, and the standard is balance of probability. The Council's reason for refusing the grant of the LDC for the proposed outbuilding is unclear because it recites the relevant law and refers to Class E to the Town and Country Planning (General Permitted Development) (England) Order (GPDO) 2015 as amended. It does not clearly state the reason why the LDC is refused. However, the delegated report combined with the appellant's grounds of appeal suggest the dispute is whether the proposed outbuilding meets the basic criteria for such structures erected under permitted development rights gifted by article 3, schedule 2, part 1 Class E to the GPDO.
3. The submissions indicate the proposed outbuilding would be 6.67 metres wide and 10 m deep, and it would be positioned within 2 m of the boundary. The appellant clarifies the rooflight would not project above the 2.5 m height and in terms of physical tolerances, the proposed outbuilding would meet limitations set in paragraph E.1 to Class E. Essentially, the decision to refuse the application is founded on the claim that the outbuilding 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.

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<sup>1</sup> The appeal turns on the facts of the case and relevant planning law and whether the specific matter is lawful as defined by the 1990 Act. Planning merits are not relevant at any stage in this process nor are actual or perceived issues relating to the handling of the LDC application. Although I visited the appeal site nobody was available to permit access to the rear. However, I was able to see the site from public viewpoints given the property's location. I do not consider a site visit to the appeal property itself is necessary to determine the appeal and proceed on this basis.

4. How should we interpret and apply the word “incidental”? Paragraph E.4 of Class E to the GPDO indicates that purposes incidental to the enjoyment of the house includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the house. The TG<sup>2</sup> provides further guidance and says a purpose incidental to a house would not, however, cover normal residential uses, such as separate self-contained accommodation or the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen.
5. Case law provides authority for how the word “incidental” should be interpreted. These authorities indicate that things like garage and games rooms are capable of being a type of use that is incidental to the enjoyment of a dwellinghouse. In the leading case of *Emin*<sup>3</sup> 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 occupier<sup>4</sup>. 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 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 circumstances<sup>5</sup>. I should also say that while there is a need for consistency in decision-making, each case must be considered on its individual merits.
6. 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.
7. 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 16 October 2023.
8. Turning to the particulars of this case, the proposed outbuilding is clearly shown in drawings submitted with the LDC application. Apart from generalised statements as to why the outbuilding is required as a home gymnasium, the evidence is less clear about the need for the proposed outbuilding of this size and scale. The representations before me do not clearly and unambiguously show the nature and type of the equipment proposed nor as to why the dwellinghouse cannot house the equipment. The complaint is that the Council did not ask

<sup>2</sup> Page 41 to Permitted development rights for householders Technical Guidance (2019).

<sup>3</sup> *Emin*<sup>3</sup> v SSE [1989] JPL 909.

<sup>4</sup> *Wallington v SoS for Wales* [1990] 62 P & CR 150; *Holding v FSS* [2004] JPL 1405; *Croydon LBC v Gladden* [1994] 1PLR 30.

<sup>5</sup> *Peche d'or Investments v SSE* [1996] JPL 311.

searching questions relating to the use of the existing dwellinghouse, but the onus is on the appellant to show a building of the size proposed is genuinely and reasonably required.

9. I have carefully considered the comparisons made between the original dwelling's footprint with the proposed outbuilding including the arguments about the extended dwelling's size compared to the proposed outbuilding. As I have said elsewhere, the dwelling at the date of the LDC application may be a relevant consideration. In terms of a pure comparison based on area, the evidence presented is not persuasive enough to demonstrate that the outbuilding's scale would be both subordinate and incidental to the dwelling, due to the lack of specific evidence as to why such a large outbuilding is required. I am therefore satisfied that the outbuilding in relation to the size of the house and its use would not be within the bounds of objective reasonableness when considering whether it is incidental.
10. My decision is likely to be disappointing, but I must determine the appeal based on the written submissions and my analysis and evaluation of the evidence before me. As the Planning Practice Guidance says at paragraph: 009 Reference ID: 17c-009-20140306, a refusal is not necessarily conclusive that something is not lawful, it may mean that to date insufficient evidence has been presented.

## **Conclusion**

11. Drawing all the above threads together, I find that the quantum of the evidence presented does not clearly or unambiguously show that, if the proposed development had begun on the application date, it would have been lawful for planning purposes. The decision to refuse the LDC application was well-founded albeit for different reasons. I conclude that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

*A U Ghafoor*

INSPECTOR