



Appeal Decision

Site visit made on 24 January 2025

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

an Inspector appointed by the Secretary of State

Decision date: 15 January 2026

Appeal Ref: APP/N5090/X/23/3325599

Thurleston, 45 Barnet Road, Barnet, London, EN5 3HB

- 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 Rico Martin against the decision of the Council of the London Borough of Barnet.
 - The application ref: 23/0153/191, dated 8 January 2023, was refused by notice dated 18 May 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 described as the ‘erection of outbuilding incidental to the enjoyment of dwelling’.
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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 Matters

2. The appellant made the application under section 191 of the Act which provides that if any person wishes to ascertain whether any operations which have been carried out in, on, over or under land are lawful, he may make an application for the purpose to the local planning authority specifying the land and describing the use, operations or other matter. While the appellant has provided me with plans showing the layout and dimensions of the building, it is clear from the evidence before me and from my site visit, that the building is incomplete. For the avoidance of doubt, I shall consider the appeal on the basis of the works that had been carried out by the date of the application.

Main Issue

3. The main issue is whether the Council’s decision to refuse an LDC was well-founded. This will turn on whether the appellant has shown that planning permission is granted for the development by reason of constituting permitted development by virtue of the provisions of Class E(a) of Part 1 of Schedule 2 of 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) sets out that uses and operations are lawful at any time if (a) no enforcement action may then 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 reason); and (b) they do not constitute a contravention of any of the requirements of any enforcement notice then in force.

5. Planning merits form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law. In an application for a LDC, the onus is firmly on the applicant to demonstrate, on the balance of probabilities, that the development was lawful at the time of the LDC application.
6. The main thrust of the appellant's case is that the development is granted planning permission by the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)(the "GPDO"). Schedule 2, Part 1, Class E of the GPDO permits the provision within the curtilage of the dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such...'.
7. An enforcement notice was issued on 2 June 2023 in respect of the appeal building. However, the notice was issued after the LDC application was made and so it does not prevent the appeal from succeeding by virtue of section 191(2)(b) of the Act.
8. The appeal will turn on two key points. Firstly, whether the building satisfies the conditions and limitations of development permitted by Schedule 2, Part 1, Class E of the GPDO and secondly, whether the building is for a purpose incidental to the enjoyment of the dwellinghouse.

Compliance with Class E.1(e)(i) and E.1(f)

9. The conditions and limitations of Schedule 2, Part 1, Class E of the GPDO, part E.1 sets out, among other things, that development is not permitted by Class E if, (e)(i) the height of the building would exceed 4 metres in the case of a building with a dual pitched roof; and (f) the height of the eaves of the building would exceed 2.5 metres.
10. The Council have provided an extract of a plan within their statement and consider the eaves height of the building measures 2.83 metres, thus exceeding the maximum specified height of 2.5 metres as set out within E.1(f). However, the Council has relied on the plans submitted, rather than measurements of the building as constructed, which is what the appellant is seeking to determine the lawfulness of.
11. During my site visit, the ridge and eaves heights were measured by the appellant and Council and it was shown that from the level of the surface of the ground immediately adjacent to the building in question, the building measured a height of some 3.9 metres to the ridge of the roof and 2.3 metres to the height of the eaves. On this basis, the actual ridge and eaves height of the as-built building measure less than the maximum height measurements required by E.1(e)(i) and E.1(f).
12. Although an interested party suggests that the effective height from ground level to ridge when viewed from their property is 5m, 'height' is the height measured from ground level immediately adjacent to the building in question. Where the ground level is not uniform, then the ground level is the highest part of the surface of the ground next to the building. It is also suggested that the outbuilding fails to adhere with the limitation of E.1(e)(iii), however since the roof structure includes two

sloping sides that meet at a central ridge, the relevant limitation is that contained within E.1(e)(i) for a dual-pitched roof. From the evidence before me and my inspection of the building, it seems unlikely that it exceeds the limitations set out in the GPDO. Significantly, the Council does not dispute that the building meets the remaining criteria of paragraph E.1.

13. On the basis of the evidence now before me, I conclude that the measurements observed at the visit demonstrate that the building would therefore satisfy the limitations specified by paragraph E.1, Schedule 2, Part 1, Class E of the GPDO.

Whether incidental to the enjoyment of the dwellinghouse

14. Turning to whether the building is for a purpose incidental to the enjoyment of the dwellinghouse, the test is to consider the incidental quality of the uses, in relation to the enjoyment of the dwellinghouse, and whether the building was, at the time of the LDC being made, genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The Council have drawn my attention to a previous appeal decision¹ whereby the Inspector observed that *'while it is not necessary for the appellant to demonstrate a requirement for the outbuilding, it must be shown to be genuinely required for a purpose incidental to the enjoyment of the dwellinghouse as such'*.
15. At the time of my site visit, whilst the gym and a number of the toilets were *in situ* within the building, I noted that the showers, spa, steam and sauna facilities were not and the building was only partially finished inside. It appears unlikely, therefore, that the outbuilding has been used for any purpose at the date of the LDC application. Nevertheless, the planning permission granted by the Order under Class E is crystallised when the development begins. It is therefore possible to determine that an incomplete structure is lawful for the purposes of section 191. Although my determination will be made based upon the works carried out at the date the application was made, how the appellant intends to lay out and use the building is a relevant consideration.
16. There is no statutory definition of "incidental" within the GPDO. Part E.4 sets out that for the purposes of Class E, "purpose incidental to the enjoyment of the dwellinghouse as such" includes the keeping of poultry, bees, pet animals, birds or other livestock for the domestic needs or personal enjoyment of the occupants of the dwellinghouse". The Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019) repeats Part E.4 and advises that, subject to the conditions and limitations of Class E, the rules also allow a large range of other buildings on land surrounding a house. Examples could include common buildings such as garden sheds, other storage buildings, garages, and garden decking as long as they can be properly described as having a purpose incidental to the enjoyment of the house. It goes on to explain that a purpose incidental to a house would not 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.
17. Case law provides guidance on how the term *'incidental to the enjoyment of the dwellinghouse'* should be interpreted by decision-makers. In the case of *Emin*² it was established that there is a need to address the nature of the activities to be

¹ Appeal Decision APP/H4315/X/20/3264529

² *Emin v SSE & Mid Sussex DC* [1989] JPL 909

carried out in the proposed building to ensure they are incidental or conducive to the very condition of living in the dwelling house. The scale of those activities is an important matter and that the size of the building, including a comparison to the host dwelling, may be an important consideration, but size alone is not a conclusive factor in determining whether the building would be incidental to the use of the main dwellinghouse.

18. It is a matter primarily of an occupier of a dwelling to determine what incidental activities they wish to carry out within such a building, albeit an objective test of reasonableness should be applied having regard to the particular circumstances of the case and it should not be based solely on the unrestrained whim of a householder. The term “incidental” therefore connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house itself. There is a need to consider whether, in the context of the planning unit, the use of the proposed building is intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse.
19. The submitted plans show the building to contain a leisure room, an area for storage, plant room, changing room, a room containing steam and sauna facilities, a room for a jacuzzi spa, and a gym. The building is also shown to contain three toilets, two shower facilities and a hallway. It is not proposed that the building would include residential additions such as a kitchen or bedrooms for eating and sleeping.
20. It is the Council’s case that the designated activities, namely gym, sauna, steam room and storage are activities that, individually, are capable of being categorised as being incidental to the enjoyment of a dwellinghouse. I see no reason to disagree and note that the facilities are the type of additions that are typically added by occupants of a dwelling and would plainly add to their enjoyment of living at the dwellinghouse. However, the Council point to the scale of the building and in particular the inclusion of three toilets, two showers, a large changing area and extensive circulation areas which it regards as cumulatively excessive and more than reasonably required to accommodate the intended purposes. The Council points to the uses and spaces being defined by the use of chattels and their duplication and dispersal being unnecessary when some of these could have been co-located. As such, it is the Council’s case that they are not reasonable nor subordinate to the enjoyment of the house.
21. The appeal building is rectangular in shape and measures some 26.44 metres by 6.94 metres, taking the measurements specified upon the submitted plan. The Council suggests the building contains an internal floor area of circa 159 sqm, which has not been disputed by the appellant. In comparison, the Council states this figure should be set against the footprint of the dwellinghouse which it considers to be approximately 120sqm. The appellant disputes the accuracy of the footprint measurement provided by the Council and alleges the actual ground floor area of the dwelling measures some 142sqm. The appellant also points to other inconsistencies within the Council’s measured evidence and a failure to consider the totality of the useable space within the dwelling which, when taking account of the first floor, measures 198sqm, a figure which has not been disputed by the Council.
22. However, irrespective of whether I use the measurement of the ground floor area given by the Council or the appellant, from my inspection of the site, I saw that the

dwellinghouse is a substantial two-storey building and whilst the appeal building is also substantial, it is single storey and, by virtue of its modest height, in my judgement remains subordinate in size to the host dwelling. Notwithstanding the differences in the figures cited by the parties, Class E does not specify that a building should be of any particular scale or siting in respect of the main dwelling and the courts have held that size, or comparative size, whilst relevant, are not a conclusive factor in determining whether a development is incidental to the use of the main dwellinghouse. It is necessary to look at the specific facts and circumstances of each individual case in order to consider whether or not an outbuilding is justified as being incidental to the enjoyment of the existing dwellinghouse.

23. The leisure room is modestly sized and the submitted plans show it to be laid out to include a centrally positioned pool table with circulation space which would allow players to play and move around the table. It would also include space for seating and an area for drinks/refreshments, which are not unusual items to be contained within a leisure room where pool is played. Although plans submitted in support of a previous application show what appears to be a kitchen in this location, the appellant has confirmed that they have changed this as it is not required.
24. The space provided within the leisure room is reasonable in size to accommodate such items and use without being excessively spacious. In my view, a leisure room can be incidental as a means of enjoying the garden in a position away from the main house. Access into the storage room and plant room is taken from the leisure room and both areas are modestly sized in terms of their use for incidental purposes.
25. The gym room is also modestly sized with the space to accommodate multiple uses including gym equipment and a yoga studio layout. Since it includes a limited range of exercise machines and yoga equipment it would likely be fit for family use only. I note concerns raised by interested parties that the studio and gym could be used as bedrooms and/or living space, however, I have no substantive evidence to show that they would be used in this way.
26. Although the circulation space contained within the changing room is generously sized, the room contains toilet and shower facilities and the doorway openings into these facilities. While a bathroom can be considered primary living accommodation, given the proposed activities, which include exercise, users of the building are likely to wish to shower before leaving the building. Benches and a cupboard for storage are not unusual furniture to be found within changing areas and given the need to safely access the washing and toilet facilities I find the circulation space is not so large as to be considered excessive.
27. Although different work schedules and leisure patterns are likely to shape when participants make use of home gym sessions and utilise the sauna and steam facilities, such that these facilities are unlikely to be frequently used by more than one or two persons of the same household, other facilities such as the jacuzzi spa and leisure room facilities are in my view activities that are more likely to be undertaken by more than two people at the same time which lends weight to the provision of duplicate shower and toilet facilities. By reason of the extent of exercise and wet leisure activities to be undertaken within the building it is not unusual or unreasonable to provide duplicate toilet facilities to serve wet facilities separate to the dry facilities. The toilet and shower facilities are also intended to be

used by household occupants when utilising the existing tennis court which is positioned close to the front of the building. This affords greater convenience to persons undertaking home-based exercise and leisure activities.

28. Circulation space is required within the steam/sauna and jacuzzi rooms to enable access to those facilities and for maintenance and safety purposes. It is not unusual or unreasonable to provide seating such as benches and recreational seats/loungers to enable to users of the wet facilities and gym to rest and relax between different activities.
29. The hallway provides access from the entrance to the building and is necessary to enable access to the various rooms given the layout of the building and the need to move safely between the different rooms.
30. I recognise that some dwellings may have a smaller footprint than the appeal building. However, while the internal space provided is substantial, the appellant has shown that the various parts of the building would be used for purposes which are incidental to the enjoyment of the dwellinghouse. I do not consider it unreasonable or excessive for a building to accommodate a range of activities or that the building in this case is cumulatively excessive.
31. An interested party has drawn my attention to the case of *Rambridge v Secretary of State for the Environment* [1997] 74 P. & C.R.126. However, that case concerned an LDC sought to use a partially completed building as a residential annex, on completion of or one day afterwards. It is not comparable to the appeal before me.
32. I therefore consider that the outbuilding with its various facilities is subordinate to the use of the main dwelling and would be incidental to the enjoyment of the house. Given my findings above, I conclude that, at the date of the application, the building was for a purpose incidental to the enjoyment of the dwellinghouse and is therefore development which is permitted by Class E of Part 1 of the GPDO.

Other Matters

33. I note concerns raised by interested parties regarding previous submissions and that the building could be used either as primary accommodation or for commercial purposes. As set out above, I have determined the appeal on the basis of the evidence before me and my inspection of the site. An LDC does no more than certify conclusively that the development is lawful at the date of the application. The operation is shown to have been protected from enforcement action on the date of the application, and it will remain so unless and until there is a material change in circumstances. If, for example, the appellant subsequently carries out works which take the building outside the limitations of the GPDO, installs facilities which are for purposes which are not incidental to the enjoyment of the dwellinghouse, such as a kitchen, or uses it for commercial purposes, then they are unlikely to benefit from the protection afforded by the certificate.
34. Criticism is made of the appellant continuing to construct the building after the issue of an enforcement notice and reference is made to a development at Cherry Trees as being a good example of how a considerate development should be conducted. However, such issues are not relevant to the determination of the appeal before me.

35. Reference is made to the clearance of the appeal site, to the installation of a gravel carpark to the front of the dwelling and the subsequent loss of trees and shrubs within the site. Aerial photographs dated November 2021 and Feb 2022 having been provided to show what has changed over that period of time. It has also been suggested that the development continues to have a negative impact upon the remaining trees and conifers which are stated to be experiencing a decline in their health and condition. Additionally, my attention has been drawn to issues of overlooking, loss of privacy and the effect of noise on neighbouring occupiers, drainage and water runoff and effects of flooding. However, these are all issues that are relevant to the consideration of planning merits which form no part of the assessment of an application for a LDC which must be considered in the light of the facts and the law.
36. I note that some concern has been raised regarding the installation of solar panels. However, from the evidence before me, it seems unlikely that these had been installed by the date of the LDC application. The solar panels are not shown on the submitted plans and so I have not been required to consider them further.
37. It is suggested that the development fails to adhere with limitation E.1(h) of Class E which stipulates that development is not permitted by class E if it includes '*the construction or provision of a verandah, balcony or raised platform*'. Whilst undated photographs have been submitted which purport to show the inclusion of a raised platform, no such platform is shown on the appellant's submitted plans nor was any raised platform upon which people or things could stand with a height of more than 0.3 metres present within the development. The submitted photograph appears to show the foundation and base of the building itself, which is subject to other height restrictions in terms of the overall height of its eaves and ridge, the former of which is discussed above.
38. There is no limitation or condition contained within Class E of the GPDO that requires the outbuilding to have been used for a purpose incidental to the enjoyment of the dwellinghouse for a period of four or ten years, as has been suggested by a number of interested parties.
39. Whilst the total area of ground covered by buildings, enclosures and containers, including the tennis courts, has been raised, there is no substantive evidence before me to suggest that this limitation (E.1(b)) has been exceeded.
40. The presence or not of other outbuildings at neighbouring properties is not a relevant matter in the determination of this appeal, which must be determined in light of its own facts and the law. Similarly, whilst the distress experienced by neighbouring occupiers has been explained, this issue of itself is not a relevant consideration in an appeal for a lawful development certificate.
41. Concern has been raised that allowing the application would set a precedent. However, as set out above, I have found that the building was lawful at the date of the LDC application. Applications elsewhere would need to be considered in light of the facts and the law.

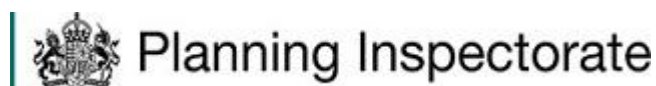
Conclusion

42. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the 'erection of outbuilding incidental to the enjoyment of dwelling' is 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



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 8 January 2023 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 appellant has shown, on the balance of probabilities, that, at the date of the application, the outbuilding which has been erected is within the size limitations set out under E.1 of Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended) and is for a purpose incidental to the enjoyment of the dwellinghouse. Planning permission is therefore granted for the building which has been constructed by the GPDO.

Signed

E Brownless

Inspector

Date: **15 January 2026**

Reference: APP/N5090/X/23/3325599

First Schedule

The erection of outbuilding incidental to the enjoyment of dwelling.

Second Schedule

Land at Thurleston, 45 Barnet Road, Barnet, London, EN5 3HB

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.

Plan

This is the plan referred to in the Lawful Development Certificate dated: 15 January 2026

by E Brownless

Land at: Thurleston, 45 Barnet Road, Barnet, London, EN5 3HB

Reference: APP/N5090/X/23/3325599

Scale: Not to Scale

