



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/C/23/3325586

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

- The appeal is made under section 174 of the Town and Country Planning Act 1990 (as amended)(the "Act").
 - The appeal is made by Mr Fenton Donrico Wesley Luke Martin against an enforcement notice issued by the Council of the London Borough of Barnet.
 - The notice was issued on 2 June 2023.
 - The breach of planning control as alleged in the notice is 'without planning permission the construction of an outbuilding in the rear garden of the property.'
 - The requirements of the notice are to: -
 1. Demolish the outbuilding at the rear of the property.
 2. Permanently remove all constituent materials resulting from the works in 1. above from the property.
 - The period for compliance with the requirements is: 3 months after the notice takes effect.
 - The appeal is proceeding on the grounds set out in section 174(2)(a), (c), (f) and (g) of the Act. Since an appeal has been brought on ground (a), an application for planning permission is deemed to have been made under section 177(5) of the Act.
-

Decision

1. The appeal is allowed and the enforcement notice is quashed.

Preliminary Matters

2. The appellant made an application to the Council under section 191(1)(b) of the Act for a lawful development certificate (LDC) for the erection of an outbuilding incidental to the enjoyment of the dwelling¹. The LDC application was refused and the Council's decision to refuse the application to grant an LDC was appealed by the appellant² (the LDC appeal). Under separate cover, I have dealt with, and allowed, the LDC appeal and issued a certificate of lawful use or development describing the existing operation which was found to be lawful. Although this appeal concerns the same outbuilding as the LDC, the LDC only certifies that the development was lawful at the date of the LDC application, which was on 8 January 2023. From the evidence before me, it seems that changes have been made to the outbuilding between the LDC application being made and the enforcement notice being issued. The enforcement notice was issued on 2 June 2023 and so my consideration under ground (c) is whether, at the date the enforcement notice was issued, the outbuilding was lawful.

¹ Planning Reference: 23/0153/131

² Appeal Decision APP/N5090/X/23/3325599

Ground (c)

3. An appeal under ground (c) is made on the basis that in respect of any breach of planning control which may be constituted by the matters stated in the notice, those matters do not constitute a breach of planning control. This ground of appeal is strictly concerned with matters of fact and law. It is for the appellant to demonstrate why their appeal should succeed on ground (c), the relevant test of the evidence being on the balance of probability.
4. The appeal concerns an outbuilding which has been erected towards the rear of the garden, to the south east of the host dwelling, beyond a tennis court. While the enforcement notice does not identify the location of the outbuilding, it is clear from the appellant's submissions that they know which outbuilding is being attacked by the notice. In the event that the enforcement notice is upheld, in the interests of certainty, it would be necessary to correct the notice by inserting a plan showing the general location of the outbuilding.
5. The appellant's case is that the outbuilding has been built in accordance with 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") and by virtue of this, that planning permission is granted for the development by reason of constituting permitted development.
6. 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...'. Whilst the Council originally considered the outbuilding to measure some 2.83 metres to the eaves and thus to be in excess of the maximum height restriction of 2.5 metres set out within clause E.1(f) of Class E of the GPDO, as part of this appeal, the Council states that the actual measured eaves height of the as-constructed outbuilding does not exceed 2.5metres from the highest adjacent natural ground level. 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.
7. During my site visit, the ridge and eaves heights of the outbuilding were measured by the appellant and Council and I saw 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. I therefore find that, from the evidence before me and my inspection of the building, the as-constructed outbuilding does not exceed the limitations set out in the GPDO. The Council does not dispute that the building meets the remaining criteria of paragraph E.1, instead the Council's remaining concern relates to whether the building is for a purpose incidental to the enjoyment of the dwellinghouse.
8. In considering whether the outbuilding would be 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 notice being issued, genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.
9. There is no statutory definition of "incidental" within the GPDO. However, 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.

10. 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*³ it was established that there is a need to address the nature of the activities to be 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.
11. 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 outbuilding is or is intended to be ancillary or subordinate to the use of the dwellinghouse.
12. The appellant sets out that the outbuilding is intended to contain a 'Pool Room/Leisure Area', gym, jacuzzi room, a steam, sauna and changing area. Space would also be set aside for a plant room, storage, The building would also include three toilets, two shower facilities and a hallway. No residential additions such as a kitchen or bedrooms for eating and sleeping are included within the building. Although the appellant has not submitted detailed plans in support of the enforcement appeal, I have been provided with a layout plan which was submitted in support of the LDC, which is consistent with the way in which the building was being laid out and the appellant's description of their proposed use of the building.
13. 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.
14. 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

³ *Emin v SSE & Mid Sussex DC* [1989] JPL 909

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 and they go beyond that reasonably required to be considered incidental to the main dwellinghouse.

15. According to the Council's figures, the outbuilding, which is rectangular in shape, is stated to measure some 26.54 metres wide by 6.98 metres in depth and includes an internal floor area of some 159sqm. 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 it is slightly larger at 123sqm and points to the Council's 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. It also forms part of the appellant's case that the dwellinghouse includes a ridge height of 6.36 metres, taking the appellant's measurement, which has not been disputed by the Council, whereas the ridge height of the outbuilding is in the region of 3.88 metres.
16. 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.
17. The leisure room is modestly sized and it would be laid out to include a pool table, sofa and a refreshment/juice bar. These are not unusual items to be contained within a leisure room where pool is to be played, and for which circulation space would be required around the pool table to allow for players to play and move around the table freely. Whilst the leisure room was unfinished at the time of my visit and no pool table, furniture or refreshment area had been installed, in my judgement I consider that the size of the room is reasonable to accommodate its intended purpose 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.
18. The gym room is also modestly sized with the space to accommodate multiple uses including gym equipment and a yoga studio layout. The room would include a limited range of exercise machines, a free weight area and yoga equipment. At the time of my visit, this room appeared finished and had been set up as a gym with a number of items of weights, exercise machines and equipment. Circulation space between the various items of equipment was not excessive and even once

containing the full range of items for gym and yoga use, it would be likely, in my view, to be fit for family use only. Although spaces within the building could be used as bedrooms and/or living space, I have no substantive evidence to show that the outbuilding would be used in this way.

19. Rooms forming the jacuzzi spa and the steam and sauna room were also unfinished internally at the time of my visit and the equipment intended to be contained within these rooms, such as the steam room, sauna, jacuzzi, relaxer beds and hot stone table had not been installed. Notwithstanding this, the appellant has set out the intended function of those rooms and given the likely floorspace that those items would occupy and the extent of circulation space that is likely to be required to enable access to those facilities and for maintenance and safety purposes, in my view, I do not consider the space to be excessively sized for their stated function. The provision of recreational seats/loungers to enable to users of the wet facilities and gym to rest and relax between different activities is not unusual.
20. Similarly, the changing room was unfinished internally at the time of my visit. However, this room is intended to contain areas for changing together with toilet and shower facilities. It would not be unusual or unreasonable to provide seating such as benches to enable individuals to change their clothing safely and, 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.
21. 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. 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.
22. 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.
23. The outbuilding is intended to contain two shower and three toilet facilities, albeit these were not all fitted at the time of my visit, and which the Council states is excessive. However, the appellant explains that the outbuilding is intended to be utilised by a large family comprised of adults and children of mixed ages and sexes. Given the dwellinghouse is a four-bedroom property, it is not unreasonable for the outbuilding to be used by a number of occupants of the property. Whilst 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 at the same time.
24. However, 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 simultaneously 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. Given

the proximity of the existing tennis court, which is positioned close to the front of the building, the toilet and shower facilities are also intended to be used by household occupants when utilising that outdoor facility. The provision of duplicate toilet and shower facilities affords greater convenience to persons undertaking home-based exercise and leisure activities.

25. 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.
26. I therefore consider that the appellant has shown, on the balance of probabilities, that the outbuilding with its various facilities is subordinate to the use of the main dwellinghouse and it would be incidental to the enjoyment of the house. Given my findings above, I conclude that, at the date of the notice being issued, 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

27. My attention has been drawn to issues of water movement, drainage and potential land movement which are stated to have worsened since the outbuilding has been constructed. However, such issues and issues regarding the appearance of the outbuilding are relevant to the consideration of planning merits which form no part of the assessment of an appeal under ground (c), which must be considered in the light of the facts and the law.
28. The presence or absence of other outbuildings at neighbouring properties is not a matter which is relevant to the determination of an appeal under ground (c), which must be determined in light of its own facts and the law.
29. The installation of solar panels upon the roof has been referred to. However, the notice is concerned with the construction of a building rather than installation of solar panels. The Council's submitted photographs, albeit undated and without clear information as to the date when these were taken, are likely to have been captured prior to the issue of the notice and they do not show solar panels to be present. It seems unlikely that the solar panels had been erected by the date the notice was issued. As such, it has not been necessary to consider this matter any further.

Conclusion

30. For the reasons given above, I conclude that the appeal should succeed on ground (c). The enforcement notice will be quashed. In these circumstances, the appeal on grounds (a), (f) and (g) and the application for planning permission deemed to have been made under section 177(5) of the 1990 Act do not fall to be considered.

E Brownless

INSPECTOR