



Appeal Decision

Site visit made on 18 November 2025

by M Savage BSc (Hons) MCD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 19 January 2026

Appeal Ref: APP/T5150/X/24/3345118

15 Bovingdon Avenue, Wembley, Brent HA9 6DH

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Obiora Okoye against the decision of the Council of the London Borough of Brent.
- The application ref 24/0295, dated 3 February 2024, was refused by notice dated 2 April 2024.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 (as amended).
- The development for which a certificate of lawful use or development is sought is proposed single storey detached building in rear garden of dwellinghouse.

Decision

1. The appeal is dismissed.

Applications for costs

2. An application for costs has been made by Mr Obiora Okoye against the Council of the London Borough of Brent. This application is the subject of a separate decision.

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a LDC is well-founded.

Reasons

4. An application under S192(1)(b) of the Act¹ seeks to establish whether any operations proposed to be carried out in, on, over or under land would be lawful. S192(2) sets out that if on application under this section, the local planning authority are provided with information satisfying them that the use or operations described in the application would be lawful if instituted or begun at the time of the application, they shall issue a certificate to that effect.
5. S191(2)(a) and (b) sets out that uses and operations are lawful at any time if: i) No enforcement action may 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 ii) They do not constitute a contravention of any enforcement notice then in force.
6. Planning merits form no part of the assessment of an application for a lawful development certificate (LDC) which must be considered in the light of the facts and the law. In an application for a LDC, the onus is on the applicant to

¹ Town and Country Planning Act 1990 (as amended)

demonstrate on the balance of probabilities that the proposed development would be lawful. An appellant's evidence should not be rejected simply because it is not corroborated. If there is no evidence to contradict their version of events, or make it less than probable, and their evidence is sufficiently precise and unambiguous, it should be accepted.

7. The main thrust of the appellant's case is that the proposed development is granted planning permission by the Town and Country Planning (General Permitted Development)(England) Order 2015 (as amended)(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...².
8. There is no dispute that the proposed building would meet the size limitations set out under Class E. This appeal will turn on whether the proposed building would be for a purpose incidental to the enjoyment of the dwellinghouse. Case law has established that consideration of the term "incidental to the enjoyment of the dwellinghouse" there should be some connotation of reasonableness in the circumstances of each case, it should not be based solely on the unrestrained whim of a householder².
9. The test is whether the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose. Size is a relevant but not conclusive factor in determining whether the proposal would be incidental to the use of the main dwellinghouse. The word 'incidental' connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling house.
10. 15 Bovingdon Avenue comprises a semi-detached dwelling, with a modest garden to the rear. Access to the rear garden can be gained from the front, or via gates along Wiggington Avenue. Within their application form, the appellant describes the proposal as 'proposed single storey detached building in rear garden of dwellinghouse.' and the proposed use is identified as 'C3'. The application form refers to a series of plans, including 231121-10A, 231121-20A, 231121-30A and 231121-31A.
11. The proposed building would be located to the rear of the garden and would measure around 8.3m by 5.7m and measure up to 2.5m in height. A shower room is shown, with the rest of the space labelled 'Studio/Gym'. Double doors are proposed in the front elevation, which would face towards the rear of the host dwelling, and a door is also proposed in the left side elevation, facing towards the gate leading out to Wigginton Avenue.
12. While the use of a building as a gym is capable of being incidental to the enjoyment of a dwelling house, the space proposed in this case would be substantial. The appellant states in their appeal statement that the proposed layout means that a small studio area could be located in one half of the building and that the other half could accommodate a small range of aerobic and anaerobic equipment. However, the appellant has not shown what this would comprise or why the extent of space proposed is reasonably required in this case. It is not clear what is meant by 'a small range of aerobic and anaerobic equipment'. To my mind,

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

one or two machines, such as an exercise bike and treadmill, and a few weights are unlikely to require such a substantial space.

13. The Permitted development rights for householders: Technical Guidance (2019) advises 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. While the proposed building would contain a shower, rather than a 'bath', the term 'bathroom' is generally used to describe a room containing a bath or a shower and typically also a washbasin and a toilet.
14. The Council raises concern regarding the provision of the bathroom, given the close proximity of the outbuilding to the main dwelling and has drawn my attention to plans approved under planning permission 05/31212, which included the provision of a bathroom at ground floor level. As such, the need for such facilities within the proposed building is suggested (by the Council) to not be justified when considering the proximity to the main house. The appellant asserts that the very nature of the use would result in the user needing a wash afterwards. However, it has not been explained, in light of the proximity of the main dwelling and the availability of alternative facilities within the main dwelling, why a bathroom is reasonably required in this case.
15. My attention has been drawn to a previously refused application for a Certificate of Lawfulness, reference 23/3696, relating to a proposed granny annex at the appeal site. This application related to an outbuilding of a similar footprint with side and front doors and similar fenestration arrangement. It is more usual for habitable accommodation to have multiple accesses due to the need to comply with fire regulations, than an outbuilding which does not include habitable accommodation. While I must consider the application on the basis of the application and not a previous scheme, the appellant has not explained why two accesses to the building are needed in this case, given the proposed use.
16. Having regard to the substantial space proposed, the provision of a bathroom (albeit with a shower) and the proposed design of the building, with two separate entrances, I find that the appellant has not shown, on the balance of probabilities, that the proposed building is genuinely and reasonably required or necessary in order to accommodate the proposed use or activity and thus achieve that purpose.

Conclusion

17. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for a proposed single storey detached building in rear garden of dwellinghouse is well-founded and that the appeal should fail. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act (as amended).

M Savage

INSPECTOR