



Appeal Decision

Site visit made on 10 February 2026

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 February 2026

Appeal Ref: APP/T0355/X/25/3362619

White Brook House, Islet Park, Maidenhead SL6 8LE

- 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 Mrs Alena Jones against the decision of the Council of the Royal Borough of Windsor and Maidenhead.
 - The application ref 24/03006, dated 5 December 2024, was refused by notice dated 18 December 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 construction of an outbuilding for incidental use.
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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 proposed operation which is found to be lawful.

Main Issue

2. The main issue in the appeal is whether the Council's refusal to grant an LDC was well-founded. This turns on whether it has been shown that planning permission is granted for the proposal by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (the GPDO).

Reasons

3. The burden is firmly on the appellant to show that the proposal is lawful, the relevant test of the evidence being on the balance of probability.
4. The appeal property contains a substantial detached two storey dwelling, standing in spacious grounds which include a large pond. The proposal involves erecting a freestanding single storey outbuilding to the west of the dwelling. The appellant stated that the footprint of the outbuilding would approach 88m², providing a gross internal floor area (GIA) of about 72m². They also stated that the dwelling has a GIA of around 201m², excluding a detached double garage. The Council did not challenge the accuracy of these or the other figures provided by the appellant and there is no sound reason to do so.
5. The proposal falls within the definition of development set out in s55(1) of the Act. Planning permission is required for the carrying out of any development of land, having regard to s57(1) of the Act. At s191(2)(a), the Act states that operations are lawful where no enforcement action may be taken in respect of them. This includes where the operations benefit from a grant of planning permission.
6. There is no dispute that the outbuilding would be located within the curtilage of the dwelling. I concur. The GPDO at Article 3, Schedule 2, Part 1, Class E, paragraph E.(a) grants planning permission for the provision within the curtilage of a dwelling

of any building or enclosure, swimming or other pool, where it is required for a purpose incidental to the enjoyment of the dwelling as such.

7. In the context of a dwelling, an incidental purpose is generally regarded as being a subordinate activity connected with the running of the dwelling or with the domestic or leisure activities of the occupiers. Paragraph E.4 states that in 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 dwelling. The Government's Technical Guidance (TG) advises that a large range of buildings can fall within Class E, including garden sheds, other storage buildings and garages, as long as they can properly be described as having a purpose incidental to the enjoyment of the dwelling. The TG also advises that 'incidental' does 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.¹
8. Established case law confirms that in Class E, 'required' for an incidental purpose should be interpreted as 'reasonably required' and does not rest on the 'unrestrained whim' of a householder. The physical size of an outbuilding, alone or in relation to a dwelling, is not conclusive; it is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and evaluate whether the outbuilding is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose.²
9. The outbuilding would contain a home gym, home office, garden store and cupboard space. Such uses could reasonably be regarded as being subordinate to and connected with the running of a dwelling and as such, be incidental to its enjoyment. They are uses which would not ordinarily be regarded as part and parcel of and integral to the use as a dwellinghouse and so do not have the characteristics of primary living accommodation. It is not uncommon for incidental uses such as a home gym and home office to occupy a secondary building separate from the associated dwelling.
10. There would also be a shower/WC in the outbuilding. This could reasonably be regarded as part of the incidental activity as a home gym. It would clearly be more convenient for the occupiers to have a facility in the outbuilding in which to freshen up and change after using the home gym and to be able to use a WC, rather than needing to walk outside for several metres to access facilities in the dwelling, possibly during hours of darkness or in periods of inclement weather.
11. The home gym would have a GIA of around 40m². It would provide an area for mat-based exercises and an area for exercise machines including a tread mill, a bench press and an exercise bike, along with some free weights. My understanding is that the home gym would be used by the appellant and another family member, who would be guided by a personal trainer. It is not unreasonable for occupiers of the dwelling to wish to take exercise together, or to engage professional assistance whilst doing so. Nor is it unreasonable to equip a home gym with a few basic items of exercise equipment such as in the proposal.
12. Based on three persons exercising together, ensuring sufficient safety clearances and allowing for some circulation space, the home gym would not be overly large in terms of either its width or depth. It is highly unlikely that the home gym could comfortably accommodate many more than three people exercising at any one time, or a much greater amount of exercise equipment. Also, I highly doubt that this space could be appreciably smaller without becoming cramped internally and inconvenient to use, for example involving moving items of equipment around between the activities. With a GIA of around 5m², after accommodating the necessary sanitary fittings the shower/WC would allow little space other than that

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019

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

which would enable one person to change clothing items and dry themselves. Accordingly, the home gym and shower/WC are not excessive in size having regard to their stated purposes.

13. With a GIA of around 9m², the home office would provide sufficient space for a standard size desk and an office chair, along with room for other office equipment including a storage unit, filing cabinet and bookshelves. The furniture and equipment are likely to take up a significant portion of the office floor area. When making allowance for ease of movement around the desk and chair whilst also affording unrestricted access to drawers, the home office would not be particularly large. It is highly unlikely that the home office could be reduced in size to any significant extent, without compromising its efficient use.
14. With a GIA of about 7m², the garden store would be used for keeping various garden related items including tools and equipment, planting supplies and pots, as well as outdoor furniture during inclement weather. Given the size of the appellant's garden and the probable associated maintenance requirements, it is entirely likely that a weathertight, secure facility of similar proportions would be needed to store such items. The garden store would have a floor area significantly less than a single garage, not dissimilar to that of many garden sheds. Accordingly, the garden store would not be unusually large when taking into account the likely type and size of the items to be accommodated.
15. The cupboard space would have a GIA of around 3.5m² and would be used for storing items associated with the home gym including yoga mats, towels and cleaning equipment, along with office supplies. It is not unreasonable to be able to store such items in a separate space, for example to avoid the home gym or home office becoming unduly cluttered. This space would also not be unusually large, having regard to the likely storage requirements of the activities it would support.
16. For the reasons set out above, the spaces provided within the outbuilding would not be unusually or unreasonably large, having regard to their intended uses. This strongly suggests that the nature and scale of the proposed activities would not go beyond purposes that are incidental to the enjoyment of the dwelling. It clearly points towards the outbuilding not being of excessive size, having regard to the secondary or incidental role in relation to the dwelling that it is proposed to serve.
17. The outbuilding would have a footprint around 67% of that of the dwelling. Nevertheless, the dwelling has over twice the floor area of the outbuilding. This is another factor which, whilst not in itself conclusive, points towards the outbuilding as not being of excessive size in relation to its stated purposes. That the dwelling has been enlarged at some stage has limited relevance to whether the proposal satisfies Class E, which concerns the property as it existed on the application date.
18. I acknowledge the Council's objections to the proposal in the current appeal and in previous determinations involving the property. However, it is not necessary to show that it is essential for the home gym and the other proposed uses to be of the size proposed; this being a stricter test than that which applies to Class E. Nor is it required to show that floorspace in the dwelling cannot be used to accommodate the purposes that the outbuilding would serve. Besides, rooms on the ground floor of the dwelling, as well as the garage, are regularly utilised by the appellant and their family. Furthermore, those spaces are unlikely to be suitable to accommodate the proposed uses due to their constrained dimensions, along with the likely significant disruption in the day-to-day running of the dwelling that would be involved. Similar considerations apply in respect of rooms on the first floor of the dwelling, which I am given to understand are also in regular use.
19. The main parties made reference to appeal decisions and Council determinations relating to outwardly similar developments. However, my findings are based on the individual facts and circumstances which apply in respect of this proposal.

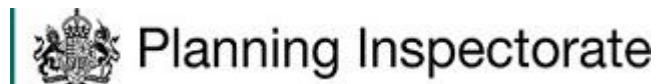
20. Therefore, on the basis of the evidence before me, as a matter of fact and degree and in the circumstances of this particular case I find that the outbuilding would be genuinely and reasonably required for purposes incidental to the enjoyment of the dwelling; it would not be of excessive size having regard to the variety of the purposes proposed and paragraphs E.(a) and E.4 are therefore complied with.
21. The planning permission granted by Class E is also subject to the size, height and locational limitations in paragraphs E.1 to E.3 being satisfied. There is no dispute that the outbuilding would satisfy all the relevant limitations in paragraphs E.1, whilst paragraphs E.2 and E.3 are not applicable in this instance. I concur.
22. Accordingly, the appellant has discharged the burden on them to show that, on the balance of probability, the proposal is granted planning permission by the GPDO at Article 3, Schedule 2, Part 1, Class E and is lawful for planning purposes.

Conclusion

23. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for construction of an outbuilding for incidental use is not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(2) of the 1990 Act (as amended).

Stephen Hawkins

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 5 December 2024 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged in black on the plan attached to this certificate, were lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

Based on the available evidence and on the balance of probability, planning permission is granted for the proposal (as shown on the drawings reference PD-03, PD-05, PD-06 & Location Plan) by Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).

Signed

Stephen Hawkins

Inspector

Date: **20 February 2026**

Reference: APP/T0355/X/25/3362619

First Schedule

Construction of an outbuilding for incidental use

Second Schedule

Land at White Brook House, Islet Park, Maidenhead SL6 8LE

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.

The effect of the certificate is subject to the provisions in section 192(4) of the 1990 Act, as amended, which state that the lawfulness of a specified use or operation is only conclusively presumed where there has been no material change, before the use is instituted or the operations begun, in any of the matters which were relevant to the decision about lawfulness.

Plan

This is the plan referred to in the Lawful Development Certificate dated: **20 February 2026**

by **Stephen Hawkins**

Land at: **White Brook House, Islet Park, Maidenhead SL6 8LE**

Reference: **APP/T0355/X/25/3362619**

Scale: Not to Scale

