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## Appeal Decision

Site visit made on 7 April 2026

**by A Berry MTCP (Hons) MRTPI**

an Inspector appointed by the Secretary of State

**Decision date: 17 April 2026**

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**Appeal Ref: APP/P4605/X/25/3373434**

**44 Walmley Ash Road, Sutton Coldfield, Birmingham B76 1JA**

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (as amended) ("the 1990 Act") against a refusal to grant a certificate of lawful use or development ("LDC").
  - The appeal is made by Mr and Mrs Jones against the decision of Birmingham City Council.
  - The application ref 2025/00334/PA, dated 20 January 2025, was refused by notice dated 26 June 2025.
  - The application was made under section 192(1)(a) of the 1990 Act.
  - The development for which an LDC is sought is "Certificate of Lawful Proposed Development for a single storey outbuilding at 44 Walmley Ash Road Sutton Coldfield".
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### Decision

1. The appeal is dismissed.

### Preliminary Matter

2. A representative from the Council failed to attend the pre-arranged site visit. However, the appellants provided me with access to the appeal site and therefore, I undertook my site visit on an unaccompanied basis. I am satisfied that I was able to see everything I needed to determine the appeal. Therefore, I notified the main appeal parties that it was not necessary for me to undertake a further site visit.

### Main Issue

3. The main issue is whether the Council's decision to refuse to grant an LDC for the proposed single storey outbuilding was well-founded.

### Background

4. Planning permission<sup>1</sup> was refused in October 2019 for the erection of a bungalow within the side/rear garden of 44 Walmley Ash Road. Despite this, a bungalow was constructed. A subsequent planning permission<sup>2</sup> to retain the bungalow was refused in February 2020 and dismissed on appeal<sup>3</sup>. Consequently, the Council issued an enforcement notice ("EN") against the bungalow that required its demolition and the removal of all debris from the land.
5. The appellants appealed the EN under grounds (f) and (g). The EN was upheld but the time required to comply with the EN's requirements was extended from 3 to 6 months. Therefore, the EN was required to be complied with not later than 26 April 2022. At the time of my site visit, the bungalow (subdivided from 44 Walmley Ash Road with its own access) was still in place. Therefore, it is unlawful.

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<sup>1</sup> Planning Ref 2019/03183/PA

<sup>2</sup> Planning Ref 2019/10055/PA

<sup>3</sup> Appeal Ref APP/P4605/W/20/3264467

## Reasons

6. For an LDC to be granted under section 192 of the 1990 Act, it is necessary for the appellants to demonstrate, on the balance of probabilities, that the use or operations described would have been lawful on the date of the application having regard to the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) (“the GPDO”).
7. The description of development refers to a proposal for a single storey outbuilding at 44 Walmley Ash Road. The submitted drawings show the elevations and floorplan of the “*proposed out building*” with the individual rooms annotated as gym, gaming room, office, WC and store x3. A site plan shows the building located to the south of the dwelling at 44 Walmley Ash Road. The land containing the proposed outbuilding and 44 Walmley Ash Road is shown as a single plot with no subdivision or separate access.
8. The application form states that the proposal does not consist of or include a change of use of the land or buildings, but states that the proposal has been started. It was clear from what I saw during my site visit that the proposed outbuilding shown on the submitted drawings is identical in its siting and external appearance to the existing bungalow. Furthermore, the appellants’ statement of case asserts:

*“In this case the appellants have explained to the Council their intention to reuse the fabric of the structure, originally intended to be a separate dwelling occupying land that would have been a separate planning unit, to provide incidental floorspace at 44 Walmley Ash Road”.*
9. Taking all of the above matters together, it is clear that the appellants seek to retain the existing bungalow’s structure, but they propose to re-purpose the interior to be used as an outbuilding incidental to the enjoyment of the dwelling at 44 Walmley Ash Road.
10. As previously stated, the bungalow is unlawful and therefore, Article 3(5) of the GPDO is applicable. Article 3(5) of the GPDO states that permission granted by Schedule 2 does not apply if:
  - a) in the case of permission granted in connection with an existing building, the building operations involved in the construction of that building are unlawful;
  - b) in the case of permission granted in connection with an existing use, that use is unlawful.
11. Therefore, at the time the LDC application was made, no permitted development rights could be claimed in connection with this building. Instead, the proposed development is that which requires express planning permission.
12. On this basis, it is not necessary for me to determine whether the appellants have sufficiently demonstrated that the proposed outbuilding would be required for a purpose incidental to the enjoyment of the dwellinghouse under Class E, Part 1, of Schedule 2 of the GPDO.

## **Conclusion**

13. For the reasons given above, I conclude that the Council's refusal to grant an LDC for a proposed single storey outbuilding 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.

*A Berry*

INSPECTOR