



Appeal Decision

Site visit made on 14 April 2026

by Stephen Hawkins MA, MRTPI

an Inspector appointed by the Secretary of State

Decision date: 24 April 2026

Appeal Ref: APP/G3110/X/25/3364705

88 Bernwood Road, Oxford, Oxfordshire OX3 9LQ

- 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 F Hafiz against the decision of Oxford City Council.
 - The application ref 24/03002/CPU, dated 15 December 2024, was refused by notice dated 27 March 2025.
 - 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 described as '*Certificate of Lawfulness of Proposed Development for the erection of an outbuilding (8.3m depth x 5.7m width x height of 2.5m).*'
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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.

Preliminary Matter

2. The description of the proposal in the banner heading is taken from the application form. For the Certificate, after obtaining the agreement of the main parties I shall use a description which more concisely reflects the matter for which an LDC is sought.

Main Issue

3. 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

4. The appeal property contains a two-storey, semi-detached, three-bedroom dwelling, with a generously portioned rear garden. It is proposed to erect a freestanding single storey residential outbuilding with a monopitch roof, towards the far end of the rear garden. 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.
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 those operations benefit from a grant of planning permission.
6. The outbuilding would be located within the curtilage of the dwelling. 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 of Class E states that '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.
 8. 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 goes on to advise 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
 9. 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.
 10. The outbuilding would provide a home gym, along with space for household storage and a garden room. Such uses could reasonably be considered 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 part and parcel of and integral to the use as a dwelling. It is not uncommon for the uses stated above and similar incidental uses to occupy a secondary building or buildings separate from the main dwelling.
 11. The outbuilding would also accommodate a shower/WC. This could reasonably be regarded as part of the incidental activity as a gym. It would clearly be more convenient for the occupiers of the property to be able to access a facility in the outbuilding in which to freshen up and change after using the gym and to be able to use a WC, rather than walking outside for several metres to access facilities in the dwelling, possibly during hours of darkness or in periods of inclement weather.
 12. The gym would have a gross internal floor area (GIA) of around 16.5m², with an area for items of fitness equipment including two types of bench press and an exercise bike, along with an area for mat-based exercises. Few details were supplied concerning exactly how the gym would be used by the appellant and other family members residing at the property. Even so, it is not unreasonable for

¹ Permitted development rights for householders: Technical Guidance MHCLG 2019

occupiers of a dwelling of this size to wish to engage in regular home-based exercise as part of a healthy lifestyle, either individually or sometimes together, using a home gym facility. There is little to suggest that the gym would not be used by family members taking exercise together on occasion, as well as on an individual basis at other times.

13. Furthermore, it is not unreasonable for a home gym to provide sufficient space to accommodate a few basic items of fitness equipment. Based on one or perhaps two people exercising at or around the same time, whilst also ensuring safety clearances between equipment and allowing room for circulation, the gym would not provide an overly large space. The different areas in the gym would allow for more effective exercise routines, involving a mix of equipment-based and mat-based activities.
14. It is highly unlikely that the gym could be used comfortably by more than a couple of people exercising at any one time or be capable of accommodating a significant amount of additional fitness equipment. It is also highly doubtful that the gym could be made appreciably smaller without it being cramped internally and inconvenient to use, for example involving the need to move items of equipment around between activities. With a GIA of around 3.8m², there would be sufficient space in the shower/WC for comfortable use by one person at a time. Accordingly, the gym and its associated shower/WC are not excessive in size having regard to their stated purposes.
15. Having a GIA of around 7m², the household storage space would not be unusually or unreasonably large for its intended purpose. The floor area would be considerably smaller than other spaces commonly used by householders for storing domestic items-for example, a residential garage. With a GIA of about 2.9m², the garden room would be capable of accommodating a modest range of garden related items such as tools, equipment and machinery. The floor area would not be dissimilar to that of a fairly modest garden shed. Given the significant size of the appellant's garden and the probable associated maintenance requirements, it is entirely possible that a secure, weathertight facility of similar proportions would be needed to accommodate such items. Therefore, the garden room would not be unusually large when taking into account the likely type and size of items that would be kept there.
16. For the reasons set out above, the outbuilding would not have an unusually or unreasonably large floor area, having regard to its 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 as such. It points towards the outbuilding not being excessive in size, having regard to the secondary or incidental role in relation to the dwelling that it is proposed to serve.
17. I am mindful that at around 45.6m², the outbuilding would have a built footprint only slightly smaller than that of the dwelling (approximately 56m²). Nevertheless, with living accommodation on two floor levels the dwelling has over twice the total floor area. 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.
18. There is no requirement in Class E to show that existing floorspace in the dwelling is incapable of use for accommodating some or all of the purposes the outbuilding would serve. Besides, I saw that ground floor rooms in the dwelling are being fully

utilised on a day-to-day basis. Also, there are likely to be practical difficulties in accommodating some of the proposed activities in the dwelling; for example, noise from exercise activity associated with use of a gym would have the potential to disturb other occupiers of the property or neighbours at times.

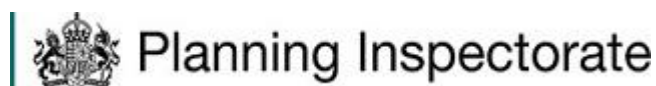
19. Drawing the above matters together, based on the evidence before me, as a matter of fact and degree and in the individual circumstances of this particular case, I find that the outbuilding would be genuinely and reasonably required for purposes incidental to the enjoyment of the dwelling as such; it would not be of excessive size having regard to the purposes proposed and Class E, paragraph E.(a) would therefore be complied with.
20. The planning permission granted by Class E is subject to all the other relevant limitations in paragraphs E.1 to E.3 being satisfied, where relevant. This includes paragraph E.1(h), which does not permit development where it would include the construction or provision of a veranda, balcony or raised platform.
21. There would be a part enclosed, covered area on the front elevation of the outbuilding. This is not what I would ordinarily describe as a 'veranda;' for that to be the case the part enclosed, covered area would have to continue along all or the greater part of the front elevation of the outbuilding. The TG describes a veranda as being usually roofed and often partly enclosed, *extending along the outside of a building at ground level* [my emphasis]. This reinforces my view that to have the characteristics of a veranda, the part enclosed, covered area would have to continue significantly further along the front elevation. It seems to me that, encompassing a modest portion of the front elevation, providing access to the main entrance and having limited floor space, the part enclosed, covered area could more accurately be described as a porch. Therefore, the proposal would not be in breach of the limitation in paragraph E.1(h).
22. There is no dispute that the outbuilding would satisfy all the other relevant size, height and locational limitations in paragraph E.1 and that paragraphs E.2 and E.3 are not applicable in this instance. I have found no sound reason to conclude otherwise.
23. 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

24. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful use or development for the erection of an outbuilding (8.3m depth x 5.7m width x height of 2.5m) 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 192
(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 15 December 2024 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, would have been lawful within the meaning of section 192 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 drawings reference PA-001 & 002) 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: **24 April 2026**

Reference: APP/G3110/X/25/3364705

First Schedule

The erection of an outbuilding (8.3m depth x 5.7m width x height of 2.5m)

Second Schedule

Land at 88 Bernwood Road, Oxford, Oxfordshire OX3 9LQ

IMPORTANT NOTES – SEE OVER

NOTES

This certificate is issued solely for the purpose of Section 192 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 would have been 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 this decision dated: **24 April 2026**

by **Stephen Hawkins**

Land at: 88 Bernwood Road, Oxford, Oxfordshire OX3 9LQ

Reference: APP/G3110/X/25/3364705

Scale: Not to Scale

