25th July 2023

Planning Department
London Borough of Camden
2nd Floor
5 Pancras Square
Town Hall
Judd Street
London
WC1H 9JE

Planning Portal Ref: PP-12328290

Dear Sir/Madam,

Section 192 Application for Certificate of Lawfulness (Proposed Development) for an Outbuilding in the Rear Garden of 14 Greenaway Gardens, London, NW3 7DH.

I write on behalf of our client, Mr Knysh, to submit an application for a Certificate of Lawfulness of Proposed Development to formally establish the lawfulness of a proposed single storey outbuilding to accommodate a swimming pool and enclosing building under permitted development rights in the rear garden of 14 Greenaway Gardens.

As per planning practice guidance, an application for a Certificate of Lawfulness of Proposed Development needs to describe precisely what is being applied for and the land to which the application relates. This request is, therefore, supplemented by the following appropriate documentation:

a) Site Location Plan;

b) Approved Landscape Plan;

c) Plans, Elevations and Sections of the proposed outbuilding;

d) A Permitted Development Design Compliance Document;

e) Statutory Declaration (Danylo Knysh);

f) A Legal Advice Note prepared by Morag Ellis KC.

Appendix 1 sets out appeal examples provided by Camden Council and appeal examples on behalf of the applicant.

A payment of £167 (inc. VAT) for the application fee has been made by the Planning Portal.

The Site

No. 14 Greenaway Gardens comprises a detached two-storey dwelling, with additional floorspace in the roof and basement, located on the north-eastern side of Greenaway Gardens. At the front of the property there is a curved private driveway with two access points which leads to a two car garage on the south eastern boundary. To the rear is an expansive T-shaped garden.

The site is not listed; however, it is located within the Redington / Frognal Conservation Area.

Planning History

Planning permission for the demolition of a summerhouse in the rear garden and associated changes to the landscaping was granted in August 2021 (LPA ref: 2021/0984/P). This involved the removal of a former swimming pool. A detailed landscaping proposal was approved by Camden Council via discharge of condition application (LPA ref: 2921/5768/P) in December 2021. The demolition of the summerhouse has taken place and the approved landscaping works are ongoing and are now substantially complete.

Planning permission was also granted on 30th November 2022 to renovate and extend to the main house. The description of development is *"Partial demolition of existing dwelling with retention of the front facade and parts of the side and rear facades and the erection of a basement extension, infill rear extension, various minor changes to the fenestration and other associated works"* (LPA ref: 2021/6257/P). This permission also involves some landscaping works immediately to the rear of the dwelling. An application to discharge the pre-commencement conditions has been submitted and development has commenced.

A certificate of lawfulness application for five single storey outbuildings in the rear garden which was refused on the 12th June 2023 (ref: 2022/5583/P). The single reason for refusal is set out below:

> *The proposed outbuildings by reason of their scale, number and intended use, fail to be of a purpose incidental to the enjoyment of the dwellinghouse as such, contrary to Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended).*

The officer's report suggested further justification is required to confirm the buildings are reasonably required.

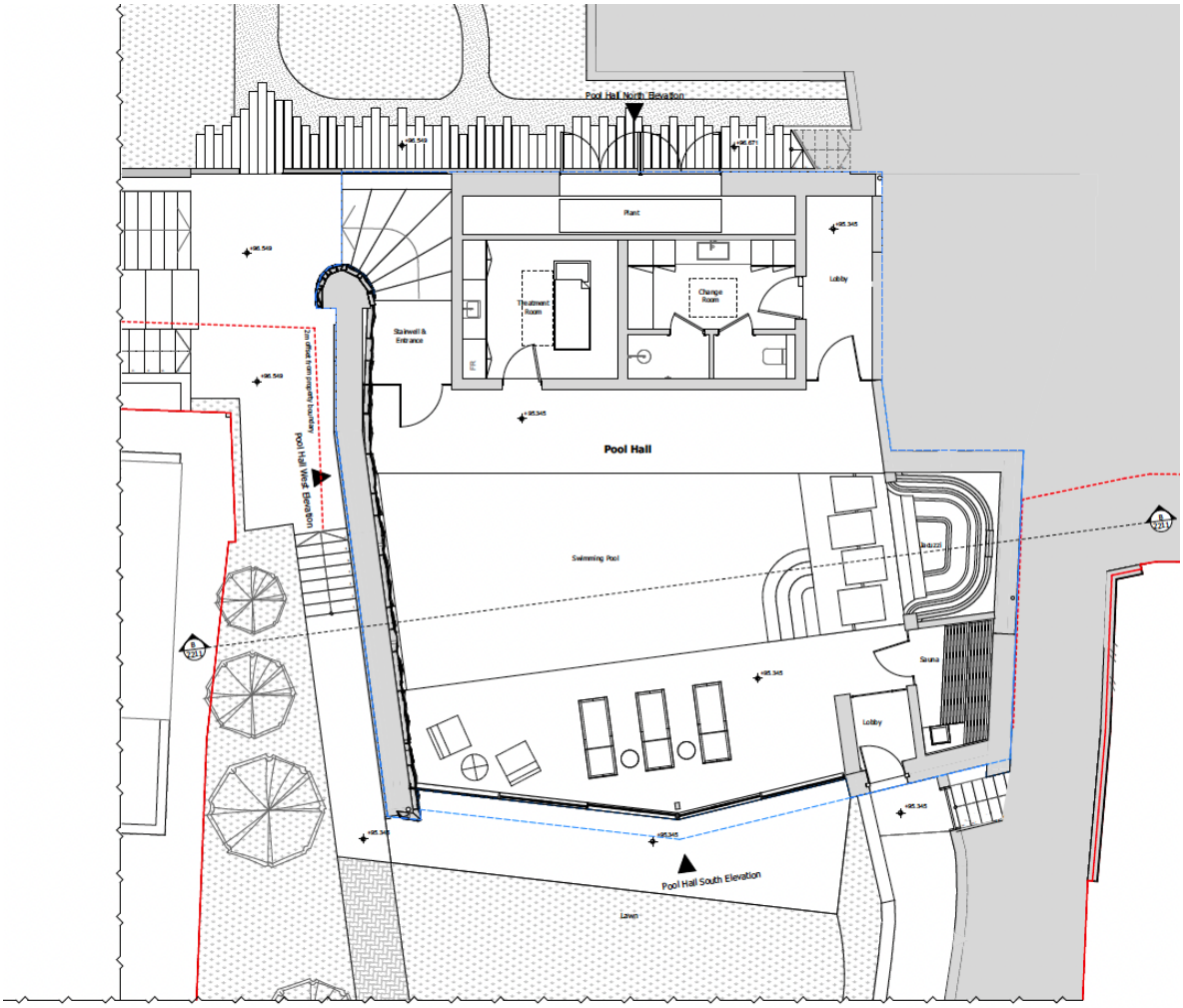
It should be noted that there appears no dispute that the physical parameters defined by the General Permitted Development Order would be complied with.

Subsequently further research has been undertaken providing further justification for the reasonableness of the proposed outbuildings, demonstrating the proposal is incidental to the enjoyment of the dwellinghouse. The proposal is now submitted in four individual Certificate of Lawfulness applications, with this application forming one of them.

The Proposal

A single storey outbuilding is proposed in the rear garden at 14 Greenaway Gardens to accommodate a swimming pool hall. This includes a swimming pool and associated jacuzzi, sauna, health treatment room and a dedicated changing and shower facility. An area by the pool includes lounge chairs and a table, providing a relaxation area but also importantly a space where the parents can supervise their children when using the pool, for health and safety reasons.

A plan identifying the location of the outbuilding is shown below:



The design of the building is consistent with that shown in the recently refused Certificate of Lawfulness application.

The submitted plans and Compliance Document provides further details of this proposed outbuilding, confirming the physical parameters of the General Permitted Development Order are complied with.

As part of the overall development, four other single storey outbuildings are proposed in the large rear garden of the property in order to meet the additional needs of the residing family. These buildings have been submitted under separate Certificate of Lawfulness.

Permitted Development Rights

Residential outbuildings are considered to be permitted development (as per Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended)) (GPDO) and therefore do not require planning permission. Rules governing outbuildings apply to sheds, playhouses, greenhouse and garages as well as other ancillary garden buildings such as swimming pools, ponds, sauna cabins, kennel, enclosures (including tennis courts) and many other kinds of structure for a purpose incidental to the enjoyment of the dwellinghouse.

There are a number of limits and conditions that need to be met in order for outbuildings to be covered by permitted development rights. This includes the location of development (not to the front of the principal elevation), maximum height (2.5 metres to the eaves and overall height of 4 meters) and the amount of coverage (no more than half the area of land around the original house).

Assessment

The proposed outbuilding at 14 Greenaway Gardens has been designed in order to comply with the residential outbuilding's conditions set out in the GDPO. An assessment of the relevant criteria is provided in the table below.

Criteria Reference	Extract from the GDPO	Assessment of Proposed Outbuildings	Criteria Met?
E1	Development is not permitted by Class E if-		
E.1 (a)	Permission to use the dwellinghouse as a dwellinghouse has been granted only by virtue of **[**Class G, M, MA, N, P, PA or Q of Part 3**]1** of this Schedule (changes of use).	The dwellinghouse was not granted by virtue of Class G, M, MA, N, P, PA or Q of Part 3 of this Schedule.	✓
E.1 (b)	The total area of ground covered by buildings, enclosures and containers within the curtilage (other than the original dwellinghouse) would exceed 50% of the total area of the curtilage (excluding the ground area of the original dwellinghouse).	The proposed building is less than 50% of the total area of the curtilage (refer to the Compliance Document for further information).	✓
E.1 (c)	Any part of the building, enclosure, pool or container would be situated on land forward of a wall forming the principal elevation of the original dwellinghouse.	The proposed building is located behind the wall of the principle elevation of the house and located in the rear garden.	✓

E.1 (d)	The building would have more than a single storey.	The proposed building is one storey.	✓
E.1 (e)	The height of the buildings, enclosure or container would exceed- (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse, or (iii) 3 metres in any other case.	Proposed building will comprise a dual pitched roof and will be 4m in height, as shown in the Compliance Document and proposed elevations.	✓
E.1 (f)	The height of the eaves of the building would exceed 2.5 metres.	The height of the proposed building's eaves do not exceed 2.5m, as shown in the Compliance Document and proposed elevations.	✓
E.1 (g)	The building, enclosure, pool or container would be situated within the curtilage of a listed building.	The proposed building is not within the curtilage of a listed building.	✓
E.1 (h)	It would include the construction or provision of a veranda, balcony or raised platform.	The proposal does not include the construction of a veranda, balcony or raised platform.	✓
E.1 (i)	It relates to a dwelling or a microwave antenna.	The proposed building will not be used as dwellings and will not comprise a microwave antenna.	✓
E.1 (j)	The capacity of the container would exceed 3,500 litres.	No container is being proposed.	✓
E.1 (a)	The dwellinghouse is built under Part 20 of this Schedule (construction of new dwellinghouses).	The dwellinghouse is not built under Part 20 of the GDPO.	✓
E.2	In the case of any land within the curtilage of the dwellinghouse which is within— (a) an area of outstanding natural beauty; (b) the Broads; (c) a National Park; or (d) a World Heritage Site, development is not permitted by Class E if the total area of	The land within the curtilage of the dwellinghouse is <u>not</u> within these areas identified.	✓

	ground covered by buildings, enclosures, pools and containers situated more than 20 metres from any wall of the dwellinghouse would exceed 10 square metres.		
E.3	In the case of any land within the curtilage of the dwellinghouse which is article 2(3) land, development is not permitted by Class E if any part of the building, enclosure, pool or container would be situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.	The land within the curtilage of the dwellinghouse is within article 2(3) land but is <u>not</u> situated on land between a wall forming a side elevation of the dwellinghouse and the boundary of the curtilage of the dwellinghouse.	✓

Assessment

The officer's report for the refused Certificate of Lawfulness application made the following key points in reaching the Council's decision:

1. *"It is demonstrated in Emin v SSE 1989 (see appendix e), the term "incidental to the enjoyment of the dwellinghouse" should not rest solely on the "unrestrained whim" (Sir Graham Eyre QC) of a householder and there should be some connotation of reasonableness in the circumstances of each case. Therefore, whilst size is not, in itself a determining factor, the evidence must nonetheless demonstrate that what is proposed, in terms of floorspace, is genuinely and reasonably required. Moreover, a sense of objective reasonableness is required in all the circumstances of the particular case."*
2. *"The proposed new outbuildings would occupy a footprint of 479.8 square metres. Whilst it is noted that the physical size of an outbuilding in comparison to the dwellinghouse (286 square metres) is not itself conclusive, it is however an important component. The host dwelling contains a substantial basement which comprises a plant, cinema, utility and other recreation rooms. When compared with the footprint of the host building, the proposed outbuildings would have more than one and a half its footprint. Given the large footprint, despite the indicated uses referred to by the applicant it could be reasonably argued that the scheme would not be used for a purpose incidental to the main dwelling house."*
3. A number of dismissed appeal decisions were referenced. See the list appended to this letter and the associated commentary.

4. *"In this case, the buildings and the proposed uses have been designed to be used by a number of people at any one time. Uses that could be combined in one space have been separated into different buildings and/or spaces. The sizes of the Games Hall & Gallery and Pool Hall are excessively large and hence not reasonably required. This is demonstrated by the scale of the sheds needed for pool filtration equipment and irrigation equipment. The provision of a Gymnasium, sports hall, gallery and studio, which are uses which could have easily been combined are considered to be overprovision of space. The structures are notably large and by reason of the proposed uses suggests that the real purposes of the buildings are as an extension to the primary accommodation. Furthermore, it is considered that the excessive space proposed for the majority of the buildings is not reasonably required to accommodate the uses proposed."*
5. *"…The proposed outbuildings are of a substantial size which has not been fully justified as being reasonably required for its intended purposes. As such it would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse and therefore would not be permitted development."*

By virtue of the Class E permitted development rights description, *"any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such"*. The proposed swimming pool building, which is the subject of this application, is evidently perceived as an incidental use as it is explicitly referenced in the legislation. The appended appeal decision research identifies a number of successful appeals for swimming pools with associated uses and space, such as saunas, changing rooms and lounging areas which confirms this is the case. The inspector, for an allowed appeal at Bracken Hill (ref: 3264261), accepted the appellant's explanation for the use of the space surrounding the pool for leisure. The inspector accepted the space was accommodating the appellant's personal aspiration and that through the information provided the inspector considered this therefore reasonably required for purposes incidental to that particular dwellinghouse.

Additionally, there was an allowed appeal at Routh, Charlwood Road (ref: 3248194) for leisure outbuildings including a sauna and hot tub. The inspector found that these intended functions are often found in newly built outbuildings set aside for leisure purposes and concluded the proposal fell under Class E.

A Statutory Declaration, signed by the applicant (Danylo Knysh), is submitted alongside this application setting out the client's reasons for the swimming pool hall, including a sauna, jacuzzi, health treatment room and lounging area space. The main reasons include using the pool for exercise and recreational purposes for the client's family and friends. The client wishes to use the indoor pool all year round, contrary to the original outdoor pool in the rear garden with limited seasonal use. Additionally, the lounging space around the pool serves for relaxation purposes but more importantly for the supervision of the client's children for health and safety purposes. The client has also explained his back issues which the pool will help with exercises as well as certain treatments accommodated in the health treatment room.

The client and his family currently have access to swimming pool facilities in the property they currently rent until 14 Greenaway Gardens works have finished (set out in Planning History section above). Hence, the need to have these facilities in 14 Greenaway Gardens to settle the family into a long-term home.

Given the reasons set out above, the proposed outbuilding has been designed to accommodate the client's family's needs and is therefore considered reasonably required.

Addressing the Council's comments in the officer's report for the refused application, there are a number of key points to make. Firstly, in terms of size, the swimming pool is no larger in length and width than that which was on site recently and is not atypical for the area. The proposed swimming pool footprint is 51 sqm compared to the original swimming pool comprising a footprint of 86 sqm. The surrounding pool hall area and ancillary facilities are by no means excessively sized for their intended purpose. Furthermore, the scale of the proposed building in relation to the host dwelling is relevant, but not a decisive factor. In this case, the swimming pool building at 164 sqm GIA is substantially smaller than the host dwelling as proposed at 1,112 sqm GIA.

Secondly, the Council mentions the proposed basement within the main house, which will provide a number of recreational rooms, but none which contain a swimming pool. There is no replication of intended uses.

Thirdly, it is acknowledged that the proposed building has been designed to be used by a number of people at any one time, including family and friends of the applicant. But that is not justification to suggest it is incidental to the enjoyment of the dwellinghouse. This was confirmed acceptable in the Bracken Hill appeal decision, listed in the appendix of this letter.

Whilst it did not form a reason for refusal, the officer's report for the refused application suggested there would be a conflict with the landscaping plans approved under permission ref: 2021/5768/P. It should also be noted that condition 3 does not require the landscaping scheme to be retained in perpetuity. The landscaping scheme is nearing completion and there will be no conflict. The proposed location of the swimming pool hall is on a area identified as hardstanding on the approved scheme.

An updated legal opinion by leading planning counsel Morag Ellis KC has confirmed that the proposed outbuildings do constitute permitted development and therefore they do not require the grant of planning permission. Therefore a Certificate of Lawfulness of Proposed Development should be issued confirming their lawfulness.

Conclusion

As set out above, an outbuilding to accommodate a swimming pool hall is proposed in the rear garden of 14 Greenaway Gardens. The building will be for a purpose incidental to the enjoyment of the dwellinghouse and benefit from permitted development rights under Schedule 2, Part 1, Class E of the GDPO.

Compared to the refused application, further justification has been provided to demonstrate that the swimming pool building is demonstrably reasonably required when considered objectively.

The Certificate of Lawfulness of Proposed Development should therefore be granted on this basis.

I look forward to receiving notification that the application for a Certificate of Lawfulness has been received and validated. However, should you require any further information, please do not hesitate to contact me.

Yours sincerely

Alfie Yeatman
Associate Director

Appendix 1: Appeal Examples

Camden Council's Appeal Examples

Address	Ref No.	Description	Decision	Comments	Floorspace Figures
28 Ash Road, Shepperton, TW17 0DN	APP/Z3635/X/21/3275492	LDC for outbuildings to accommodate storage, music studio and indoor skateboarding.	Dismissed 7/11/2022	The Inspector found that: Storage – "commonly" accepted as incidental to enjoyment of dwelling. Skateboarding – indoor sports are frequently accepted as incidental to the enjoyment of a dwelling house. However, the full use of the large space proposed is not explained. Therefore, the proposed outbuilding is not reasonably required to accommodate this use and therefore not required for a purpose incidental to the enjoyment of the dwellinghouse. Music studio: needs connection to a musical hobby. In the absence of further evidence in relation to the use proposed they cannot properly determine whether this use would be incidental.	n/a
9 Lees Lane, Newton, Motram St Andrew, Cheshire, SK10 4LJ	APP/R0660/X/22 3294400	LDC for ancillary accommodation within curtilage of existing dwelling to include cinema, gym, garage space, workshop and garden storage plus external swimming pool.	Dismissed 04/10/2022	The inspector found that: The appeal relates to "ancillary accommodation" initially but goes onto incidental to dwelling reasoning. Disagreement of residential curtilage (not relevant to the 14 Greenaway Gardens proposal). 5 car garage, cinema room for seating up to 8 people, changing room, gymnasium and shower with w.c, swimming pool. Doubts that a cinema room would meet the technical guidance and would be an extension to the primary accommodation, rather than incidental use.	Proposed outbuilding: 216sqm Host dwelling: 279.1sqm

				The building would be unusually large for its reasonable needs and use by occupiers of the house and provision of 7/8 cars in total is in excess of the number reasonably required for the enjoyment of the dwelling. The height of the building would exceed 2.5m within 2m of the boundary (not relevant to the 14 Greenaway Gardens proposal).	
Vista Cottage, Millfield Lane, Haydock, WN4 0YF	APP/H4315/X/20 3264529	LDC for proposed storage/home gym. The new outbuilding will be clad in dark green.	Dismissed 26/05/2021	The inspector found that: The main areas of dispute are whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse. A home gym could be considered incidental to the enjoyment of a dwellinghouse. Similarly a storeroom. The size of the building – no information how the appellant envisages the facilities would be used nor why the gym need to be of the size proposed. Must demonstrate it is genuinely required – no overall justification of the size and layout.	Proposed outbuilding: 500 sqm Host dwelling: 146.7 5sqm (Proposed outbuilding over 3.4 x the size of the host dwelling.)
12 Marshalls Heath Lane, Wheathampstead, St Albans, AL4 8HR	APP/B1930/X/21 3288857	LDC for home office, summer room, music room, gymnasium, changing room and small rooms for cupboard storage, plant room and toilet facilities.	Dismissed 11/08/2023	The inspector found that: The point of dispute is whether the outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse A proposed summer room of 49 sqm to be excessively large. A 32 sqm music/art rooms seems to be unjustified as being reasonably required.	Proposed outbuilding: 175.8 sqm Host dwelling 220 sqm

The Planning Inspectorate

Appeal Decision

Site visit made on 3 October 2022

by V Bond LLB (Hons) Solicitor (Non-Practising)

an Inspector appointed by the Secretary of State

Decision date:7TH NOVEMBER 2022

Appeal Ref: APP/Z3635/X/21/3275492
28 Ash Road, Shepperton TW17 0DN

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr and Mrs Knight against the decision of Spelthorne Borough Council.
- The application Ref 21/00223/CPD, dated 9 February 2021, was refused by notice dated 29 March 2021.
- 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 'The reception *[sic]* of a garden room'.

Summary Decision: The appeal is dismissed.

Preliminary Matter

1. In my banner heading, I have taken the description of the proposed development from the application form. It would appear though that this wording contained a typographical error and should have been 'the *erection* of a garden room'; the appellant in the appeal form describes the proposal as for the 'erection of a single storey detached outbuilding'.

Main Issue

2. The main issue is whether the Council's refusal to grant a certificate of lawful use or development was well founded. This turns on whether the proposed outbuilding would be granted planning permission by Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended (GPDO) ('Class E').

3. The assessment to be made is whether, on the facts of the case and in accordance with relevant planning law, the proposed development would be lawful. Planning merits are not relevant and the onus is on the appellant to make their case on the balance of probabilities.

Reasons

4. The appellant considers that the proposed building is permitted development ('PD') under Class E. Class E permits the provision within the curtilage of a dwellinghouse of any building…required for a purpose incidental to the enjoyment of the dwellinghouse as such.

5. There is no dispute that the proposed outbuilding would comply with the dimensional constraints in Class E. Rather, the matter in contention is whether the outbuilding is required for a purpose incidental to the enjoyment of the dwellinghouse as such.

The proposal

6. The proposed outbuilding would be located in the rear garden of the host property. The garden is reasonably long and widens at the end. It is in the wider part of the garden, furthest from the house, that the outbuilding is intended to be located. The rear garden at present contains a variety of outbuilding/shed type structures, along with a large roofed pergola/pavilion. As to the proposed uses of the outbuilding, based on the application plans, the main floor space of the outbuilding would be given over to three uses being: storage; music studio; and indoor skateboarding.

Analysis

7. In assessing whether a proposed use is for a purpose incidental to the enjoyment of a dwellinghouse, it is proper to have regard to the nature and scale of the proposed use. Size may be taken into account as part of this assessment but is not conclusive.

8. It should be shown that the building is reasonably required to accommodate the proposed use; the test is one of objective reasonableness. Whether an outbuilding is 'reasonably required' cannot rest solely on the unrestrained whim of the householder. Equally, reasonable aspirations of householders should not be frustrated where the use proposed is sensibly related to the enjoyment of the dwelling. I acknowledge the factual differences as between the *Emin*[1] case referred to by the Council and the present case. However, I consider that the principles laid down in that case remain applicable here.

9. With respect to the nature of uses proposed, domestic storage is commonly accepted in principle as being incidental to the enjoyment of a dwelling. Use for indoor skateboarding, although relatively unusual in a domestic setting, cannot in my view be sensibly distinguished from use for other sports indoors, which are frequently accepted as incidental to the enjoyment of a dwellinghouse.

10. Use as a music studio could be deemed an incidental domestic use if in connection with a musical hobby. I have only limited information though as to the intention here; the appellant is described in submissions as a 'musician', but it is unclear whether or not this term connotes a musical professional. It appears though that the music studio would be used by the children of the family also, at least to some degree. Whilst a professional music studio use in a domestic setting might also be capable of representing an incidental domestic use, in the absence of further evidence in relation to the use proposed, I cannot properly determine whether this would be so in this instance.

11. With respect to size, as noted above, the outbuilding would conform to the dimensional restrictions of Class E and would be single storey in contrast to the host dwelling. As to the space proposed for the uses intended, the building would contain a modest-sized store room. The music studio area would appear

[1] *Emin v SSE* [1989] JPL 909

to be a little more spacious than would be reasonably required for this use, accommodating space for a sofa, along with fairly generous circulation space.

12. The remaining space within the building, taking the majority of the overall floor space, would be used for a skate ramp area. The ramp itself as shown on the application drawing appears to use only approximately half of the floor space in this area. Almost the same amount of space again would appear to be circulation space. No explanation is given for this largely vacant area.

13. Drawing these matters together, whilst the proposed indoor skateboarding use is in principle capable of being incidental to the enjoyment of the dwelling, on the evidence before me and as a matter of fact and degree, the excessive space proposed leads me to find that the outbuilding proposed is not reasonably required to accommodate this use. Thus, it is not required for a purpose incidental to the enjoyment of the dwellinghouse as such.

14. Consequently the outbuilding would not be PD under Class E and would require a specific grant of planning permission which has not been obtained. I note the benefits that the outbuilding would bring to the family, along with the appellant's comment that it would not be harmfully dominant in its context in visual terms. However, planning merits are not relevant to my assessment.

Conclusion

15. For the reasons given above I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey detached outbuilding was 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.

Decision

16. The appeal is dismissed.

V Bond

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 7 September 2022

by John Whalley

an Inspector appointed by the Secretary of State

Decision date: 4 October 2022

APP/R0660/X/22/3294400
9 Lees Lane, Newton, Mottram St Andrew, Cheshire SK10 4LJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal by Cheshire East Council to grant a certificate of lawful use or development.
- The appeal was made by Mr J Sleddon.
- The application, reference 21/3875M, was received by the Council on 19 July 2021. It was refused by a notice dated 8 December 2021.
- The development for which a certificate of lawful use or development was sought was the proposal for the erection of ancillary accommodation within curtilage of existing dwelling to include cinema, gym, garage space, workshop and garden storage plus external swimming pool.
- The application was made under section 192(1)(b) of the Act for a certificate of lawfulness for the proposed development.

Summary of decision: A certificate of lawfulness is not issued.

Appeal site and proposal

1. Application plan 7076_SK01 dated January 2021 shows outlined in blue, the extent of the Appellant Mr Sleddon's holding at No. 9 Lees Lane, Newton, Mottram St Andrew. The property had been part of a horticultural nursery. Allowing for scaling errors, the blue outlined site is about 70m wide extending some 300m south-west from Lees Lane. Plan 7076_SK02 shows outlined in red, the area of land within the 7076_SK01 blue line area, the proposed site layout of the development for which a certificate of lawfulness is sought. This red line also purports to show the extent of the residential curtilage to No. 9.

2. Planning permission ref: 15/0917M was granted on 22 September 2015 for the change of use from A3 Restaurants and Cafes and B1 Business (Offices) into C3 Dwelling house – what is now the substantial semi-detached appeal dwelling, garden and land at No. 9 Lees Lane. The location plan attached to that permission shows, outlined in red, an incongruously small approximately trapezoidal area of land around the dwelling. Its red line shows an area about half the approximately 50m x 50m roughly square area shown on the 7076_SK02 plan of the current appeal application project.

3. Plan 7076_SK05, included with the current appeal application, shows the extent of the 15/0917M permission red line, (shown as a broken line), and the larger area 7076_SK02 red line the Appellant claims is the agreed extent of the residential curtilage.

4. Mr Sleddon wishes to construct ancillary accommodation within what he said is the curtilage of his home. The lawful development certificate proposal was described as cinema, gym, garage space, workshop and garden storage and outside swimming pool. An 18m x 12m 'L' shaped building at the south-western corner of the garden would consist of a single space 5 car garage, (drawings also show a possible 4 car/store area use of the garage), a cinema room with seating for up to some 8 persons, a changing room, a gymnasium and shower with w.c. room. The 10.4m x 5.4m swimming pool would be constructed close to the ancillary building.

5. Mr Sleddon said the works were permitted by The Town and Country Planning (General Permitted Development) (England) Order 2015, (the Order).

The Order

6. Subject to Article 3 to the Order, Schedule 2 Permitted development rights, Part 1 - Development within the curtilage of a dwellinghouse at Class E.(a) permits the provision of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such, … . Development is not permitted by Class E if, (amongst others): — (e) the height of the building, enclosure or container would exceed - (i) 4 metres in the case of a building with a dual-pitched roof, (ii) 2.5 metres in the case of a building, enclosure or container within 2 metres of the boundary of the curtilage of the dwellinghouse.

Council's objections

7. The Council set out 3 reasons why they considered Mr Sleddon's project would not be permitted by the Order.

    1. The development falls outside the curtilage associated with the dwelling at No. 9 Lees Lane. Permitted development rights in Class E were therefore not available.
    2. Provision of a further 5 no. car garage in addition to the previously permitted 3 no. car garage is not considered incidental. The additional accommodation is not considered incidental as it had not been shown to be genuinely and reasonably required for the enjoyment of the dwelling.
    3. Even if the red line on the application location plan was deemed to represent the residential curtilage, the outbuilding would be within 2m of its boundary and higher than 2.5m. That would not comply with E.1(e)(ii) to Class E of the Order.

Reason for refusal 1. - Curtilage

8. As there was disagreement as to the extent of the residential curtilage of No. 9 and which directly affects application of the Class E Order concessions, I need to come to a view on its extent.

9. The Council said the appeal project would stand on land outside the curtilage of the dwelling at No. 9. Their view relied upon the plan attached to the 22 September 2015 15/0917M change of use planning permission as showing the then and current extent to the residential curtilage. That excludes the site for the projected amenity buildings and swimming pool.

10. Mr Sleddon said the Council had previously confirmed the extent of the property's curtilage in an earlier householder application, (plan - permitted

development (ancillary accommodation) 7076_SK05). He said the Council had subsequently issued a certificate of lawfulness for the development using the same curtilage shown on the certificate application. Appellant drawing 7076_SK05 dated January 2021 shows, with a dashed red line, what is described as "historic red line from application ref: 15/0917M", (the small trapezoidal area), and, in solid red line, said to be "agreed extent of residential curtilage", (the 2x larger application area). However, the Council did not accept this claim. They said applications submitted in 2018 and 2019 may have had a larger red edged area than shown on plans attached to planning permission 15/0917M, but they did not specifically grant permission for an extended residential use or garden use of the land edged red as shown in the current appeal application.

11. The 15/0917M change of use permission plan shows that the small trapezoidal curtilage excludes a small part of the current road access splay to the property, a corner of the 3 car garage, a substantial length of the driveway to the garage and a rear extension, single storey glazed link, porch and outbuilding converted to residential living space, all of which was built following the grant of planning permission 19/1693M on 7 August 2020. The layout plan to that permission shows the same curtilage red line as shown on the current appeal application plan.

12. In my view, the current appeal application plan shows an appropriate residential curtilage to the house at No. 9 Lees Lane. However, in reaching that determination 2 steps had to be cleared. First, does the land within the larger red line area have a lawful residential use? If so, can it be considered to be curtilage land to the dwelling at No. 9?

13. Plans attached to the following approvals all show a development project red line in the position shown in the current appeal application:

> 19/1693M - Two storey rear extension, single storey glazed link, porch and conversion of existing outbuilding to residential living space (C3) together with a detached garage – approved with conditions – 7 August 2020.
>
> 19/0617M - Certificate of proposed lawful development for two storey rear extension and detached garage – positive certificate – 15 March 2019.
>
> 18/5063M - Erection of single storey glazed link, porch and conversion of existing outbuilding to residential living space (C3) – approved with conditions – 22 January 2019.

14. The judgement in the case of *R (oao Sumption) v Greenwich LBC* [2007] EWHC 2276 (Admin) shows that a curtilage can be readily extended, and that there is no qualifying time before it can be so treated. The proviso is that curtilage can only be extended into an area which is already lawfully part of the residential planning unit. The September 2015 15/0917M change of use planning permission showed that the red lined land area shown on its Location Plan AD2104.00 gained a residential use permission, with the remaining blue lined area of land assumed to retain its lawful A3 Restaurants and Cafes and B1 Business (Offices) use. Without consideration of the effect of the 19/1693M 7 August 2020 planning permission or the 2 2019 permissions, which show the same red line area as for the current appeal, any part of Mr Sleddon's holding outside the red lined area shown on the

September 2015 15/0917M Location Plan AD2104.00 could not be part of the residential curtilage, following the proviso in *Sumption*.

15. The Council said the post 2015 permissions showing a larger red edge area than on that 15/0917M permission did not grant permission for an extended residential use or garden use. The only aspects of those applications which allowed a change of use of land to residential use extended only to siting of the outbuilding and extensions, on their direct footprint, rather than the entirety of the red edged area shown on plans/site plans supporting those applications. They were not applications seeking to add existing non-residential use land to the domestic garden of the dwellinghouse. Nor was the application that led to the 7 August 2020 19/1693M planning permission seeking a change of use of the former A3 and B1 uses to a C3 use.

16. Planning permission 19/1693M issued on 7 August 2020 was for the erection of a 2 storey rear extension, a single storey glazed link, a porch and for the conversion of an existing outbuilding to residential living space (C3) together with a detached garage. Location plan PL01 and Proposed location plan PL03A attached to that decision show a red line in the same position and extent as that attached to the current certificate application plan. That is, the larger square approximately 50m x 50m area that encompasses the application project proposals. In my view, a plain reading of that planning permission leaves little doubt that either the red lined area was already in a lawful residential use or that the 19/1693M decision granted or confirmed that area of land as having a residential use. Nothing in that decision indicated the red line area surrounding the operational development granted permission would not be in a lawful residential use but would remain to an A3/B1 use when the permission was implemented. The 19/1693M permission has been implemented and the red line area is clearly used in association with the residential use of the house and its buildings.

17. In the case of *Sinclair-Lockhart's Trustees v Central Land Board* (1950) 1 P&CR 195, it was held that '*The ground used for the comfortable enjoyment of a house or other building may be regarded as being within the curtilage of the house or building and...an integral part of the same even though it has not been marked off in any way... It is enough that it serves the purpose of the house or building in some necessary or reasonably useful way*.'. Also, in *Sumption* it was said that once garden use was confirmed, even though it had not been formally approved, it would be well-nigh impossible to contend the land did not fall within the curtilage of the dwelling. What mattered was the use being made of the land, and the situation at the application date.

18. Applying the tests in the case of *Burford v Secretary of State for Communities and Local Government & Anor* [2017] EWHC 1493 (Admin), which were the physical layout of building and attached land, ownership, past and present and their use or function, past and present, I conclude that, on balance, the appeal project development would lie within the residential curtilage of the dwellinghouse at No. 9 Lees Lane and that the plan attached to the appeal application correctly shows the boundary of the curtilage to the house at No. 9 Lees Lane. Permitted development Order concessions are therefore available to the lawful development certificate application land.

Reason for refusal 2. – ***required for a purpose incidental to the enjoyment of the dwellinghouse***

19. The lawful development certificate proposal was described as cinema, gym, garage space, workshop and garden storage plus external swimming pool. The 18m x 12m 'L' shaped building at the south-western corner of the garden would consist of a single space 5 car garage, (Elevation drawings show a possible 4 car/store area use of the garage), a cinema room with indicated seating for up to about 8 persons, a changing room, a gymnasium and shower with w.c. room. A 10.4m x 5.4m outside swimming pool would be constructed close to the ancillary building. Mr Sleddon said he collected cars. He intended to store them safely at home. The gym and swimming pool were also to be used incidentally to the dwelling at No. 9.

20. Class E at E.4. to the Order says that for the purposes of Class E, "*purpose incidental to the enjoyment of the dwellinghouse as such*" includes …… personal enjoyment of the occupants of the dwellinghouse. Examples could include common buildings such as garden sheds, other storage buildings, garages and garden decking as long as they can be properly be described as having a purpose incidental to the enjoyment of the house. A purpose incidental to a house would not, however, 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. The Collins English Dictionary says: "*If one thing is incidental to another, it is less important than the other thing or is not a major part of it.".*

21. In the case of *Emin v Secretary of State for the Environment and Mid-Sussex County Council* QBD 1989 58 P&CR, it was said that an outbuilding must be 'required for some incidental purpose' to be permitted development under Class E, but its size is not relevant. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwellinghouse, and whether the building is genuinely and reasonably required to accommodate the use and thus achieve that purpose. Whether a building is required for a purpose associated with the enjoyment of a dwellinghouse "*cannot rely on the unrestrained whim of he who dwells there*". It was also held that the term incidental connotes an element of subordination in land use terms in relation to the enjoyment of the dwelling itself. Reference is made to the need to consider whether, in the context of the planning unit, "*the uses of the proposed buildings are intended and would remain ancillary or subordinate to the main use of the building as a dwellinghouse.*".

22. The *Emin* judgment helps to show that the relationship between the size of the proposed building and the size of the dwellinghouse itself is not, of itself, determinative. The Class E concession neither mentions such a size relationship nor does it fix a limit on the size of an outbuilding. However, the words incidental to the enjoyment of the dwellinghouse as such impart some consideration of a relationship between the house and its outbuilding.

23. Those principles were reiterated in *LB Croydon v Gladden* [1994] 1 PLR 2 and *Holding v FSS & Thurrock BC* [2004] JPL 1405. The term 'required' is therefore interpreted for the purposes of applying Class E as meaning 'reasonably required'. Other judgments clarify that in each case it has to

remain a matter of fact and degree as to whether facilities were, or were not, an integral part of the ordinary residential use of the primary unit, (*Peche D'or Investments v SSE* [1996] JPL 311), and that the facilities could not be something for the provision of a primary dwellinghouse purpose, (*Rambridge v SSE & East Herts DC* [1996] QBD). The case of *Wallington v SSW & Montgomeryshire DC* [1990] JPL 112; [1991] JPL 942 showed it is necessary to consider whether the relevant purpose is incidental to the particular dwellinghouse in question rather than any dwellinghouse.

24. I need to consider whether Mr Sleddon's building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse. Whether or not a use is incidental for the purposes of s.55(2)(d) must be considered with regard to the primary residential use and the type and size of the dwellinghouse and its curtilage, as well as the scale and nature of the claimed incidental activity. Carrying out a hobby and/or working from home may be incidental, but there must be a normal functional relationship between the incidental and the residential use.

25. The Council referred to an earlier application, (ref: 21/0895M) for ancillary accommodation to the dwelling at No. 9. In that, the internal facilities proposed in the outbuilding included a bedroom, bathroom and kitchen area. They said the internal layout of the outbuilding was the only element that had now changed. Where a bedroom had been proposed a 'changing room' was now indicated; where a kitchenette/bar was proposed, a 'bar' was now shown and the shower room was now to be a w.c. The Council justifiably questioned the true intent of the occupants of the dwelling as to the use of the outbuilding's rooms. I would also have doubts that the proposed cinema room would meet the tests set out in Ministry of Housing, Communities and Local Government guidance in Permitted development rights for householders Technical Guidance on Class E at p. 41 which states that a purpose incidental to a house would not cover normal residential uses, such as separate self-contained accommodation nor the use of an outbuilding for primary living accommodation such as a bedroom, bathroom, or kitchen. That is, if the use of a space was fundamental to the ordinary day-to-day functioning of the dwelling it would not be incidental but part of the primary accommodation. The proposed cinema room for watching films and television might be used as an extension to the primary accommodation, as an additional lounge, rather than an incidental use.

26. I also consider that the appeal proposal would be an excessively large building, capable of use by several persons at a time. Notably large even when compared to the main house it purports to serve, it might suggest that the real purpose of the proposed building would not be an incidental use. In my view it would not be subordinate to the main dwellinghouse. By virtue of its scale in relationship to the house, it would seem unusually large for its reasonable needs and use by occupiers of the house. Together with the 19/1693M permission garage, the application project would bring the total car garaging capacity of the property to 8, (7 if one bay was used for storage). I agree with the Council that would be in excess of the number reasonably required for the enjoyment of the dwelling. The outbuilding's use is unlikely to be incidental to the enjoyment of the main dwellinghouse. Its construction and use would not benefit from the concessions in Class E.(a)

to the Order. It would require planning permission. Whilst it may be that the proposed swimming pool, in isolation, might satisfy the Class E Order limitations, it appears that it would be used in association with the changing room in the large 'L' shaped building, (para. 28 below). I find that no separable part of the project can benefit from the Order concessions.

Reason for refusal 3. – Compliance with Class E - E.1(e)(ii)

27. Mr Sleddon accepted that the height of part of the proposed 'L' shaped building would be higher than 2.5m within 2m of the boundary, (the edge of the redefined curtilage). Consequently, the appeal project would not comply with limitation E.1(e)(ii) of the Order. Mr Sleddon said the drawings could be revised and agreed. However, I can only consider the details before me. There is no equivalent power to that set out under s.191(4) of the Act for the Local Planning Authority, Secretary of State or Inspector to modify the terms of a lawful development certificate application made under s.192 of the Act.

28. The details contained in the application must show that all concession conditions and limitations are satisfied. A scheme either precisely complies with the limitations of the Order or it does not. Also, where any part of the scheme does not comply, none of the development is granted planning permission by the Order. The case of *Garland v MHLG* [1968] 20 P&CR 93 is authority for that position.

29. My conclusion on this point may appear unduly rigid. But Order concessions are not concerned with matters of planning merit or whether any failure to comply with a condition or limitation is large or small.

Conclusion

30. I found in favour of the Appellant on the curtilage question. The small non-compliance with Class E - E.1(e)(ii) to the Order could be surmounted by a compliant modified application. The need to demonstrate that the application project be "*required for a purpose incidental to the enjoyment of the dwellinghouse as such"* was not met.

FORMAL DECISION

31. For the reasons given above, I conclude that the Council's refusal to grant a certificate of lawful development for the erection of ancillary accommodation within the curtilage of the existing dwelling to include cinema, gym, garage space, workshop and garden storage plus external swimming pool at No. 9 Lees Lane, Newton, Mottram St Andrew, Cheshire SK10 4LJ was well founded and that the appeal should fail. I exercise the powers transferred to me by s.195(2)(a) of the Act accordingly.

John Whalley

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site Visit made on 5 May 2021

by Debbie Moore BSc (HONS), MCD, MRTPI, PGDip

an Inspector appointed by the Secretary of State

Decision date: 26 May 2021

Appeal Ref: APP/H4315/X/20/3264529
Vista Cottage, Millfield Lane, Haydock, WN4 0YF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 (the 1990 Act) as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr John Littler against the decision of St Helens Metropolitan Borough Council.
- The application Ref P/2020/0413/CLP, dated 23 June 2020, was refused by notice dated 14 August 2020.
- The application was made under section 192(1)(b) of the 1990 Act 1990 as amended.
- The development for which a certificate of lawful use or development is sought is described as "new single storey structure to be erected for proposed storage/home gym. The new outbuilding will be clad in dark green".

Decision

1. The appeal is dismissed.

Preliminary Matters

2. I have taken the site address and the description of development from the application form.

3. In this type of appeal, the onus of proof is firmly upon the appellant. The Courts have held that the relevant test of the evidence on matters such as an LDC application is the balance of probabilities. The appellant's own evidence does not need to be corroborated by independent evidence in order to be accepted. If the Council has no evidence of its own, or from others, to contradict or otherwise make the appellant's version of events less than probable, there is no good reason to dismiss the appeal, provided their evidence alone is sufficiently precise and unambiguous. I must examine the submitted factual evidence, the history and planning status of the site in question and apply relevant law or judicial authority to the circumstances of this case. For the avoidance of doubt, the planning merits of the proposal are not relevant, and they are not an issue for me to consider in the context of an appeal under section 195 of the 1990 Act as amended.

Main Issue

4. The main issue is whether the Council's decision to refuse to grant a lawful development certificate was well-founded.

Reasons

5. The appellant's case is that the proposed development would fall within that 'permitted' under Article 3 and Schedule 2, Part 1, Class E to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO), which concerns buildings within the curtilage of a dwellinghouse. E.(a) states that *the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse as such* is permitted development subject to conditions and limitations. One of the main areas of dispute between the parties concerns whether the building would be reasonably required or would be wholly used for purposes incidental to the enjoyment of the dwellinghouse.

6. The building would be sited to the south-east of the main dwelling on land currently used for residential purposes. It would measure 20 x 25 metres giving a floor area of 500 square metres. The building would be constructed with a dual span roof and would be clad in green sheeting. Internally it would accommodate a running track, a boxing ring, a boxing bag area, a free weights area, a cardio area, a shower and a WC. There would also be an enclosed storage area. It is stated that the use would be as a home gym/storage.

7. E.4 says 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 Technical Guidance[1] advises the rules also allow, subject to the conditions and limitations, 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.

8. Case law has established that permitted development rights under Class E extend only to buildings required for a purpose incidental to the enjoyment of the dwellinghouse. An incidental use is one which is functionally related to the primary use. The functional relationship should be one that is normally found and not based on the personal choice of the user. Whether a building is required for an incidental purpose will depend on a fact and degree assessment.

9. The Court in *Emin*[2] confirmed that regard should be had not only to the use to which the Class E building would be put, but also to the nature and scale of that use in the context of whether it was a purpose incidental to the enjoyment of the dwellinghouse. The physical size of the building in comparison to the dwellinghouse might be part of that assessment but is not by itself conclusive. It is necessary to identify the purpose and incidental quality in relation to the enjoyment of the dwelling and answer the question as to whether the proposed building is genuinely and reasonably required in order to accommodate the proposed use or activity and thus achieve that purpose. The use of the building should be subordinate to the use of the house as a dwellinghouse.

10. I acknowledge that an outbuilding serving a purpose as a home gym could be considered incidental to the enjoyment of the dwellinghouse. Similarly, a

[1] Permitted Development Rights for Householders: Technical Guidance, MHCLG (September 2019).
[2] *Emin v SSE & Mid Sussex DC* [1989] JPL 909.

storeroom for garden tools and/or personal belongings could be considered an incidental use of an outbuilding. However, such uses should remain subordinate.

11. In this case, the proposed development is a relatively large building of substantial construction. The plans indicate that the building would accommodate a range of training facilities that could be used contemporaneously. There is no information about how the appellant envisages the facilities would be used nor why the gym needs to be of the size proposed. A home gym may well accommodate small pieces of equipment, such as a running machine and/or a cycle 'turbo', in addition to a bench press and free weights area. However, a boxing ring and running track, alongside a boxing bag area and other equipment suggests the facility goes beyond that of a home gym. Moreover, there would be a large area of circulatory space between exercise areas. It is unclear why this is necessary if the building is to be limited to having a purpose incidental to the enjoyment of the house, since it would be unlikely to be used by multiple people.

12. While it is not necessary for the appellant to demonstrate a requirement for the outbuilding, it must be shown to be genuinely required for a purpose incidental to the enjoyment of the dwellinghouse as such. Given the extent of the facility that would be provided, and because the layout appears to have been designed to be used by a number of people at any one time, I am not satisfied that its true purpose would be as an incidental use. Overall, there is no clear justification for an additional building of the size and layout proposed, and for the purposes described.

13. Further, the Council is of the opinion that the building would be sited forward of a wall forming the principal elevation of the original dwellinghouse and so would not be permitted development by virtue of E.1(c) of the GPDO.

14. The meaning of 'principal elevation' is considered in the Technical Guidance as follows – "*in most cases the principal elevation will be that part of the house which fronts (directly or at an angle) the main highway serving the house (the main highway will be the one that sets the postcode for the house concerned). It will usually contain the main architectural features such as main bay windows or a porch serving the main entrance to the house. Usually, but not exclusively, the principal elevation will be what is understood to be the front of the house. There will only be one principal elevation on a house. Where there are two elevations which may have the character of a principal elevation, for example on a corner plot, a view will need to be taken as to which of these forms the principal elevation*".

15. The dwelling is situated within a relatively large plot of land accessed from Millfield Lane. It is sited at a right angle to the road with its gable, and attached conservatory extension, facing towards the highway. The main entrance to the bungalow is located on the elevation facing into the garden and towards the driveway. In my opinion, the garden facing (south) elevation is clearly the principal elevation since it contains the main entrance, which is emphasised by a porch, and substantial windows. This elevation forms the front of the house, as opposed to the road facing gable which forms a side elevation. The Guidance sets out that in most cases the principal elevation fronts the main highway. In this case, the house it at right angles to the highway, which is unusual. However, it does not follow that the gable forms the principal

elevation since it contains none of main architectural features of the garden facing elevation and could not be understood to be the front of the house.

16. I appreciate this is at odds with the Council's reasoning on a previous application at the property[3]. However, this assessment was based on an interpretation which relied upon the relationship of the dwelling to the highway. I disagree with this conclusion for the reasons explained above.

17. I understand that the Council recently granted permission for a large building on land adjoining the southern boundary of the appellant's property. This is not relevant to the matters at issue here.

18. Therefore, I consider that the development would be sited on land further forward of a wall forming the principal elevation of the original dwellinghouse and so would not be permitted development.

Conclusion

19. The totality of the evidence presented in support of the appellant's claim does not show that, on the balance of probability, the proposal would satisfy the test of being required for a purpose incidental to the enjoyment of the dwellinghouse as a matter of fact and degree. Further, it would be sited on land further forward of a wall forming the principal elevation of the original dwellinghouse. Accordingly, it would not be permitted development by virtue of the rights conveyed by Article 3 and Schedule 2, Part 1, Class E to the GPDO.

20. I conclude that the Council's refusal to grant a certificate of lawful use or development in respect of a "single storey structure to be erected for proposed storage/home gym" was 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.

Debbie Moore

Inspector

[3] Ref P/2012/0517.

The Planning Inspectorate

Appeal Decision

by Thomas Shields DipURP MA MRTPI

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 11 August 2022

Appeal Ref: APP/B1930/X/21/3288857
12 Marshalls Heath Lane, Wheathampstead, St. Albans, AL4 8HR

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 ("the Act") against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mrs & Mrs Andy Willis against the decision of the St Albans City Council.
- The application Ref. 5/21/2436, dated 23 August 2021, was refused by notice dated 4 November 2021.
- The application was made under section 192(1)(b) of the Act.
- The development for which a LDC is sought is a single storey rear garden outbuilding set 2m from the north and east boundaries of the application site.

Summary of Decision: The appeal is dismissed.

Procedural matters

1. Since the outbuilding is proposed, rather than existing, and having studied the detailed plans, documents, photographs and other appeal submissions from the parties, I am satisfied a decision can be made without a physical inspection of the site. I have therefore determined the appeal on this basis, made solely on matters of fact, planning law, and application of judicial authority.

2. In order for a LDC to be granted the onus is on the appellant to demonstrate, on the balance of probabilities, that the proposed development would be lawful. The relevant date for determining lawfulness is the date of the application.

Reasons

3. The main issue is whether the Council's decision not to issue an LDC was well founded. It turns on whether the proposed outbuilding would be lawful by benefitting from the planning permission ("permitted development") available via Article 3 and Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 ("the Order").

4. Subject to size and other limitations Class E(a), Part 1, of Schedule 2 includes the provision within the curtilage of a dwellinghouse of any building required for a purpose incidental to the enjoyment of that dwellinghouse as such. The parties agree that the limitations (E.1 to E.3) to Class E(a) would be satisfied, and I come to the same conclusion. Consequently, the only point of dispute between the parties is whether the proposed outbuilding would be required for purposes incidental to the enjoyment of the dwellinghouse.

5. As shown on the application drawings[1] the extended bungalow has a footprint of a little over 220m^2. The proposed rectangular outbuilding would occupy a little less than one third of the garden space at the rear of the bungalow. Externally it would measure 29.3m length x 6m width, resulting in an overall footprint of 175.8m^2. The gross internal floor area would be a little less than that figure.

6. *Emin v SSE and Mid-Sussex District Council* [1989] 58 P & CR 416 is a judgement relevant to this appeal. It established that the term "incidental" was held to connote an element of subordination in land-use terms in relation to the enjoyment of the dwellinghouse. For the purposes of applying Class E the term "required" should be interpreted as "reasonably required" rather than the "unrestrained whim" of the occupier. Also, with regard to the nature and scale of the activities to be carried on, the size of a proposed building can be an important consideration, although not conclusive by itself.

7. The critical test to be applied is firstly whether the uses of the proposed outbuilding, in the context of the whole planning unit, are intended to be and would remain ancillary and subordinate to the main use of the property as a dwellinghouse, and secondly; whether the proposed outbuilding is "reasonably required" in order to accommodate those uses.

8. The parties refer to other planning application and appeal decisions. However, while the developments, circumstances, and other physical factors in those cases may hold some similarities with this appeal, they are not the same as the appeal before me. Also, while the Council's approach of direct comparison of floorspace in the outbuilding with particular room sizes in the dwellinghouse is material, it is not determinative. As is clear from *Emin*, each case must be individually judged on a fact and degree basis in the light of the particular circumstances. That is the approach I take here.

9. The total area of internal floorspace of the outbuilding would be greater than the footprint of the original bungalow, but smaller than the bungalow as it exists now. In the context of the size of the existing bungalow, occupied by a family of 4 with visiting relatives, and the size of the overall planning unit, I consider the outbuilding would be of a substantial size, although this is not a decisive factor by itself.

10. Turning to the internal floor areas for specified purposes, the outbuilding would comprise a home office (17m^2), a summer room (49m^2), a music room (32m^2), a gymnasium (31m^2), a changing room (7m^2) and three smaller rooms for cupboard storage, a plant room and toilet facilities. I am satisfied that such activities and uses are of types that would be ordinarily incidental and subordinate to the use of the main dwellinghouse, and the Council does not argue otherwise.

11. As to whether the floorspace for those activities are reasonably required in order to accommodate the stated uses, I find that the 17m^2 office space is not excessive or disproportionate in a domestic setting. I make the same finding in respect of the other uses and spaces other than in relation to the summer room and the music room. I turn to these matters next.

[1] AR2266/PD/7/02

12. The appellant's explanation for the 49m^2 size of the summer room is that it would provide additional living space as a lounge area for the enjoyment of the whole family, although I note that it would *"primarily be used by the appellant's growing children who now need a space to play with their friends when they visit".* Given the size of the existing lounge and other space within the bungalow for domestic activity, I find the size of the proposed summer room to be excessively large and hence not reasonably required.

13. Notwithstanding the above, the submitted drawings also indicate the material commencement of a conversion of the front double garage to a play room. This is not referred to by either party. However, if it were intended to be a play room it adds further weight to my finding that the proposed summer room is an over-provision of space that is not reasonably required.

14. With regard to the proposed music/art room, the proposed 32m^2 also seems to me to be unjustified as being reasonably required for the purposes of the children's art activities and music practice, particularly so if such activities must be disaggregated into a separate room rather than being activities that could be incorporated into a summer room use, and bearing in mind also the existing space for domestic activities in the main dwellinghouse.

15. Taking account of all the evidence before me, I find the proposed outbuilding to be of a substantial size which has not been fully justified as being reasonably required for its intended purposes. As such it would not be reasonably required for purposes incidental to the enjoyment of the dwellinghouse and therefore would not be permitted development.

Formal Decision

16. For the reasons given above, I conclude, that the Council's refusal to grant a lawful development certificate, for the proposed single storey rear garden outbuilding set 2m from the north and east boundaries of the application site, was well-founded and that the appeal should fail. I exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act.

Thomas Shields

INSPECTOR

Applicant's Alternative Appeal Examples

Address	Ref No.	Description	Decision	Comments	Floorspace Figures
1 Periwinkle Lane, Dunstable, LU6 3NP	APP/P0240/X/22/3305621	LDC for construction of a garage.	Allowed 27/04/2023	The Inspector found that: Nowhere in the GPDO does it state that an outbuilding, built under PD rights, must appear to be subordinate or incidental to the dwellinghouse. Appellant – specific interest in motor cars and has a small collection Garage to store x3 motor cars – this desire is clear and understandable No reason to withhold an LDC	Proposed outbuilding: 90 sqm Host dwelling: 30 sqm (Existing outbuildings: 52 sqm)
Gransden House, Church Street, Royston, Barnsley, S71 4QZ	APP/R4408/X/21/3288717	LDC for t gym, yoga area, storage room, garden storage room.	Allowed 06/06/2022	The Inspector found that: A gym and yoga area are incidental to the enjoyment of a dwellinghouse. Wet room – normally found in a dwellinghouse however when exercising not uncommon to want to shower afterwards and is clearly not the main use to which the outbuilding would be put and is therefore ancillary to the gym and yoga area. Demonstrated the proposed outbuilding is reasonable required.	Proposed outbuilding: approximately 60 sqm Host dwelling: n/a
Bracken Hill, Mottram Road, Alderley Edge, SK9 7JF	APP/R0660/X/20/3264261	LDC for an orangery to rear of existing house plus outbuilding to provide garaging, pool complex and gym.	Allowed 27th October 2021	The Inspector found that: Sufficient justification/evidence provided: Annotated garage with annotations and dimension submitted reflecting the cars owned – therefore it is reasonably required for purposes incidental to the enjoyment of the dwellinghouse. Accepted the explanation why the gym cannot be provided within the main	Proposed outbuilding: 132sqm Host dwelling: 115 sqm

				dwelling – preference for it to be located in the outbuilding where it would be commonly used in connection with the other leisure facilities, particularly the swimming pool. Fully accept the appellant's explanation that the pool area is intended to be for leisure rather than solely for the purpose of exercising. It would be regularly used to entertain extended family and friends as well as being used on a day to day basis by the family themselves. The size of the poolside seating area reflects that personal aspiration rather than being directly proportional to the size of the main dwelling. However, from information provided can consider the poolside seating area can be considered reasonably required for purposes incidental to this particular dwellinghouse.	
31 Amesbury Road, Dagenham, RM9 6AA	APP/Z5060/X/20/3260503	LDC for 4 room outbuilding providing: sculpture room, stone carving/casting room/home office/store room)	Allowed 20/05/2021	The Inspector found that: Proposed home office and storeroom are incidental to the enjoyment of the dwelling. Sculpture room and a stone casting/carving room is unusual but the novelty of the use does not necessarily mean it would be unacceptable. Hobby rooms are often found in the curtilage of dwellings. Common examples include use the space to store and restoring a classic car, use of the space for model railway layouts as well as the ubiquitous games room with a competition size snooker table.	Proposed outbuilding: 53.3sqm Host dwelling: 35sqm

5 The Bye, Acton, London, W3 7PG	APP/A5270/X/21/3266441	LDC for erection of rear outbuilding for use incidental as a gym and home office/storage	Allowed 12/07/2021	The Inspector found that: Whilst the floor area in this case is fairly large in proportion to both the original existing ground floor areas it is less so when considered in the context of the overall size of the dwellinghouse. A gym and office use can be associated with residential use and the attached shower room and toilet alone is not enough to show a primary residential use of the outbuilding.	Proposed outbuilding: 41sqm Host dwelling: 59.12sqm
Routh, Charlwood Road, Horley, RH6 0AJ	APP/C3620/X/20/3248194	LDC for erection of ancillary leisure outbuilding. Accommodates garden room, games room, small cinema room, sauna, hot tub, toilet, shower and changing area.	Allowed 07/12/2020	The Inspector found that: The individual rooms' intended functions, as labelled are often found in newly built or converted outbuildings or extensions set aside for leisure purposes. The degree of circulation space, whilst noted, is not a particular concern, nor are the existing individual outbuildings in the rear garden large enough to provide such a consolidated function.	Proposed outbuilding: 97sqm Host dwelling: n/a
102 Harmer Green Lane, Welwyn, Herts, AL6 0ES	APP/C1950/X/20/3256606	Certificate of lawful use or development for the construction of single storey outbuilding under permitted development with garage, workshop, gym and bicycle & garden maintenance equipment storage.	Allowed 24/11/2020	The inspector found that: The footprint of the dwelling is 50sqm but that the total floor space area is 320sqm and therefore the proposed outbuilding is proportional to the dwelling. There is nothing in Class E that suggests any comparison should be made to the 'original' dwelling.	Proposed outbuilding: 57sqm Host dwelling: 50sqm

68 Brook Road, London, NW2 7DP	APP/T5150/X/17/3188649	Outbuilding used as gym and playroom	Allowed 30/07/2018	The inspector found that: The concept of Class E is broad and a wide range of incidental purposes is permitted. Incidental purposes must be connected with the running of the house or the domestic recreational or leisure activities of its occupiers and the building must be required for those purposes, but it is primarily for the occupiers to decide what incidental purposes are to be enjoyed in the building. Nature and scale must be considered, and the use of the building should be subordinate to the house as a dwellinghouse. The size of the building in comparison to the size of the house is a relevant, but not a decisive factor. As long as the purposes are connected to the running of the house and to the domestic, recreational or leisure activities of its occupiers and do not involve the provision of primary living accommodation.	Proposed outbuilding = 28sqm Host dwelling: n/a

The Planning Inspectorate

Appeal Decision

Site visit made on 24 April 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 April 2023

Appeal Ref: APP/P0240/X/22/3305621

1 Periwinkle Lane, Dunstable, LU6 3NP

- 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 Tony Prosser against the decision of Central Bedfordshire Council.
- The application ref CB/22/01993/LDCP, dated 18 May 2022, was refused by notice dated 3 August 2022.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended (the Act).
- The development for which an LDC is sought is construction of garage.

Decision

1. The appeal is allowed and attached to this decision is an LDC describing the existing development which is considered to be lawful.

Reasons

2. 1 Periwinkle Lane is an end-terraced two-storey dwelling with a substantial rear amenity area that is part of the curtilage of the dwellinghouse. The Appellant is seeking an LDC for the construction of a garage within the amenity area. Class E of Schedule 2 of Part 1 of The Town and Country Planning (General Permitted Development) (England) Order 2015 (the GPDO) states that provision within the curtilage of the dwellinghouse of a building required for a purpose incidental to the enjoyment of the dwellinghouse as such is permitted development subject to size and other limitations. The Council accepts that the proposed garage satisfies all of the size and other limitations but concluded, overall, that the garage is not "…genuinely and reasonably required for such an incidental use".

3. In reaching their conclusion the Council compared the floor area of the proposed garage, about 90 square metres, with the floor area of the dwelling, about 30 square metres, and the floor area of existing outbuildings, about 52 square metres. This comparison led to the conclusion that "…the proposed and existing outbuildings exceed the existing floor area of the dwelling and would not appear subordinate or incidental to the host dwelling". Nowhere in the GPDO does it state that an outbuilding, built under permitted development rights, must appear to be subordinate or incidental to the dwellinghouse. However, case law indicates that relative size can be a consideration but is not necessarily conclusive. Importantly, such an outbuilding must be 'genuinely and reasonably required or necessary in order to accommodate the proposed use or activity'.

4. The curtilage of the dwellinghouse is significantly larger than that of the two neighbouring terraced dwellings of a similar size; the curtilage extends to the rear of the neighbouring properties. In this regard the size of the proposed garage, given also that it would be single storey and would be some distance from the terrace of dwellings, and notwithstanding the existing outbuilding, is not a reason to withhold an LDC. The Appellant has had a specific interest in motor cars for a number of years and has a small collection, including four American Chevrolets, two of which are pick-ups of some vintage. They are stored within the curtilage of the dwellinghouse, mostly outside but also in the existing outbuilding. The proposed garage would enable the Appellant to store three more cars inside rather than outside. The desire to garage three more cars is clearly genuine and understandable. The proposed garage is, as a matter of planning judgement, reasonably required to accommodate the proposed use.

5. For the reasons given above, and on all the evidence now available, the Council's refusal to grant an LDC for the construction of a garage at 1 Periwinkle Lane, Dunstable was not well-founded and the appeal succeeds. The powers transferred under section 195(2) of the Act have been exercised accordingly.

John Braithwaite

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 18 May 2022 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged and cross-hatched in black on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The operations are for a purpose incidental to the enjoyment of the dwellinghouse and are genuinely and reasonably required to accommodate the proposed use.

Signed

John Braithwaite

Inspector

Date: 27 April 2023
Reference: APP/P0240/X/22/3305621

First Schedule

The construction of a garage

Second Schedule

Land at 1 Periwinkle Lane, Dunstable LU6 3NP

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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: 27 April 2023

by John Braithwaite BSc(Arch) BArch(Hons) RIBA MRTPI

Land at 1 Periwinkle Lane, Dunstable LU6 3NP

Reference: APP/P0240/X/22/3305621

Scale: Not to Scale

The Planning Inspectorate

Appeal Decision

Site visit made on 24 May 2022

by M Madge DIPTP MA MRTPI

an Inspector appointed by the Secretary of State

Decision date: 6 June 2022

Appeal Ref: APP/R4408/X/21/3288717
Gransden House, Church Street, Royston, Barnsley S71 4QZ

- 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 J Moston against the decision of Barnsley Metropolitan Borough Council.
- The application ref 2021/1221, dated 3 September 2021, was refused by notice dated 12 November 2021.
- The application was made under section 191(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 the erection of a detached outbuilding.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful development describing the proposed operation which is found to be lawful.

Preliminary Matters

2. Foundation trenches for a building have been dug. I noted that the position, dimensions, and layout of the foundations correspond to those shown on Drawing No. DWG 001 Rev C submitted with the previous application for an LDC, which was subsequently dismissed on appeal[1]. The current proposal is shown on Drawing No. DWG-001 Rev D, this shows the outbuilding to have a reduced footprint. While the reduction in footprint means that part of the foundation trench is in the wrong place, the remainder is correct. I therefore consider that, as a matter of fact and degree, a material start has been made on the development for the purposes of s56 of the Town and Country Planning Act 1990 as amended ('the 1990 Act'). The application has therefore been made correctly under section 191(1)(b) of the 1990 Act.

Reasons

3. The **main issue** to consider is whether the Council's decision to refuse the LDC was well-founded.

4. The relevant part of Class E sets out the permitted development rights, subject to the conditions and limitations in paragraphs E.1 to E.4, for the following type of development:

> *'The provision within the curtilage of the dwellinghouse of…any building or enclosure…required for a purpose incidental to the enjoyment of the dwellinghouse as such…'*

[1] APP/R4408/X/20/3263972

5. There is no dispute that the proposed outbuilding meets the relevant conditions and limitations, but that is not decisive. Of more significance is the first part of Class E, which is set out above.

6. The courts have held that the word *'required'* in Class E should be interpreted to mean *'reasonably required'*. The words *'as such'* are also important. Thus, in this type of case, the appellant should show that what is proposed is reasonably required for purposes incidental to the use of the dwellinghouse as a dwellinghouse. The onus of proof is upon the appellant and the relevant test is the balance of probability. It is therefore necessary to examine the reasons for the development being *'required'* under Class E. Otherwise, the GPDO would be open to abuse by proposals involving buildings being constructed for one stated purpose and being used for another purpose.

7. When evaluating whether a building to be erected under the provisions of Class E is reasonably required for the enjoyment of the dwellinghouse as such, matters such as personal preference are not conclusive factors. The matter does not rest solely on the unrestrained whim of the householder. An unusually large building will not necessarily be reasonably required just because a householder says it is. The appellant should show that a building of the proposed size is reasonably required, and that it has been designed with incidental uses in mind, having regard to all the circumstances. The proposed physical size of the outbuilding is not determinative, but it is a relevant consideration.

8. The host property is a larger than average semi-detached house set in a larger than average plot. The dwelling is set well back from the road and its private garden is located to the side and rear of the dwelling, behind a high stone wall with an electric vehicular access gate. The premises benefits from having a detached double garage within the private garden and the proposed outbuilding would be located behind that garage, adjacent to the side boundary and facing into the garden.

9. The proposed outbuilding is shown to be divided into 4 rooms. I accept that a gym and yoga area can be regarded as incidental to the enjoyment of the dwellinghouse as such. The wet room is a facility that would normally be found in a dwellinghouse and therefore identified as habitable accommodation. However, when exercising, it is not uncommon to want to shower afterwards. Given the distance from the outbuilding to the dwellinghouse, the provision of the wet room, as a matter of fact and degree, would be ancillary to the use of the gym and yoga area. Given the size of the wet room, it is clearly not intended to be a main use to which the outbuilding would be put. It is also less than likely that anyone residing in the dwelling would use the wet room as a primary bathing facility. I therefore find that the wet room is ancillary to the incidental use of the outbuilding as a gym and yoga area. I also have no concerns regarding the incidental nature of the storage and garden storage areas.

10. The gym and yoga area would be served by bi-fold glazed doors and 2 roof lights, the storage room would have a single window and the garden storage room would also be served by bi-fold glazed doors. The appellant advises that the double garage is used solely for the parking of cars, and I agree that the proposed storage areas are not excessive in proportion to the size of the dwelling. It is also of note that the size of the outbuilding has been reduced in

response to the deletion of the seating area that the previous Inspector found to be habitable accommodation. The provision of glass doors to a garden storage area may be uncommon. However, they would not be visible from any public vantage point and the Council has not shown that the property would be particularly vulnerable to burglaries. The security of the building therefore remains a matter for the appellant.

11. The appellant has therefore shown that the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse at Gransden House as a dwellinghouse. On the balance of probability and the evidence available, I find that the outbuilding would be lawful under Class E of the GPDO.

Conclusion

12. For the reasons given above and having considered all other matters, I conclude that the Council's refusal to grant a certificate of lawful development in respect of the erection of an outbuilding within a residential curtilage was not well-founded and that the appeal should succeed. I will exercise accordingly the powers transferred to me in section 195(3) of the 1990 Act as amended.

M Madge

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 3 September 2021 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, was lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 (as amended), for the following reason:

The outbuilding is required for purposes incidental to the enjoyment of the dwellinghouse and meets relevant conditions and limitations set out in Article 3, Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Signed

M Madge
Inspector

Date: 6 June 2022
Reference: APP/R4408/X/21/3288717

First Schedule

Erection of a detached outbuilding.

Second Schedule

Land at Gransden House, Church Street, Royston, BARNSLEY S71 4QZ

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 operations described in the First Schedule taking place on the land specified in the Second Schedule was lawful, on the certified date and, thus, was not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

Plan

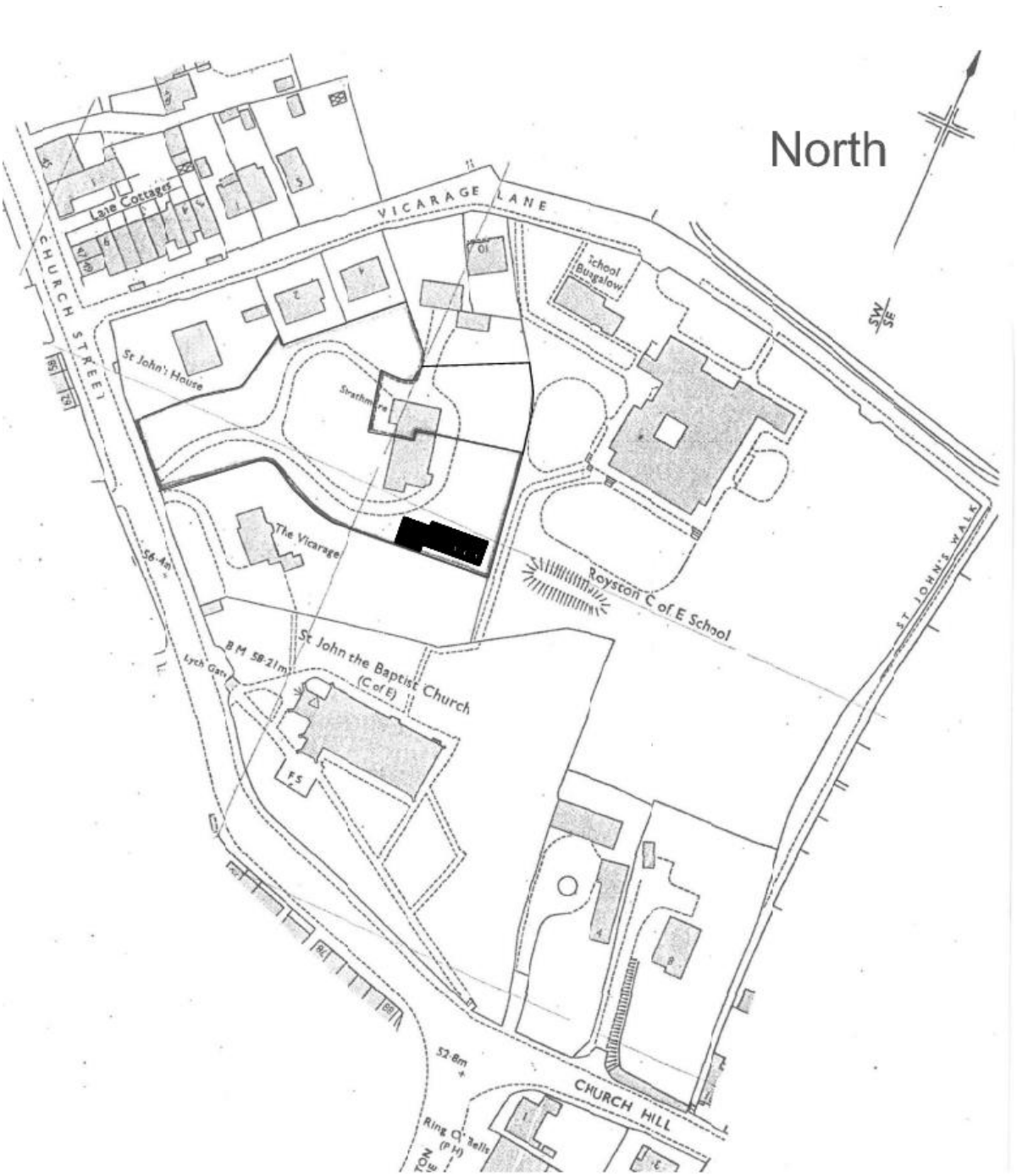
This is the plan referred to in the Lawful Development Certificate dated: 6 June 2022

by M Madge DIPTP MA MRTPI

Land at: Gransden House Church Street, Royston, BARNSLEY S71 4QZ

Reference: APP/R4408/X/21/3288717

Scale: Not to Scale



The Planning Inspectorate

Appeal Decision

Site visit made on 7 September 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2021

Appeal Ref: APP/R0660/X/20/3264261
Bracken Hill, Mottram Road, Alderley Edge, SK9 7JF

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr & Mrs Gouge against the decision of Cheshire East Council.
- The application Ref 19/5424M, dated 4 November 2019, was refused by notice dated 16 June 2020.
- The application was made under section 192(1)(b) of the Town and Country Planning Act 1990 as amended.
- The use for which a certificate of lawful use or development is sought is an orangery to rear of existing house plus outbuilding to provide garaging, pool complex and gym.

Summary Decision: the appeal is allowed and a certificate of lawful use or development is issued, in the terms set out below in the Formal Decision

Application for costs

1. An application for costs was made by Mr & Mrs Gouge against Cheshire East Council. This application is the subject of a separate Decision.

Procedural matters

2. The description of the development for which the LDC is sought is taken from the application form. The appellant advises that an extension corresponding with the orangery included in the appeal application was found by the Council not to require Prior Approval in December 2019 (Council Ref:19/4890M). The LDC was refused only in respect of the proposed outbuilding.

3. The operational development for which the LDC is sought comprises, in summary, a single-storey extension described as an orangery and an outbuilding. Although the Council found the orangery not to require Prior Approval under a different application process, that operational development still forms part of the LDC application. There is no suggestion that the appellants agreed to the orangery being removed from the LDC. Consequently, that aspect of the LDC remains undetermined by the Council and remains before me to determine.

4. The Council found that the single storey extension (orangery) is permitted by Class A, Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015 (GPDO) and that Prior Approval was not required for this development. I see no reason to take a different view. Consequently, my Decision will focus on the proposed outbuilding, which the Council found not be development permitted by the GPDO.

Reasons

5. Section 192(2) of the Town and Country Planning Act 1990 (1990 Act) indicates that if, on an application under that 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; and in any other case shall refuse the application. My decision is therefore based on the facts of the case and judicial authority. For the avoidance of doubt, this means that the planning merits of the proposed development are not relevant to this appeal and the main issue is whether the Council's decision to refuse to grant a Certificate of Lawful Use or Development (LDC) was well founded. In this respect, the burden of proof is on the appellant to show that, on the balance of probability, the development proposed would have been lawful on the date on which the application was made.

6. The Council's decision notice does not state the reason(s) for the conclusion that the proposed outbuilding does not accord with Class E, Part 1, Schedule 2 of the GPDO. It is necessary to refer to the Officer Report on the application to discover the reasons why the proposed outbuilding was considered by the Council to accord with Class E of the GPDO. It is confirmed there that, in the Council's opinion, the outbuilding accords with the conditions and limitations of Class E (and therefore by implication Classes E.1, E.2 and E.3). I see no reason to take a different view. The sole reason for the refusal of the LDC was that the outbuilding was not considered to form part of the residential curtilage of the property known as Bracken Hill.

7. The Officer Report goes on to state that, on balance, the Council considered that following the submission of amended plans the uses would appear to be incidental to the dwellinghouse as such and not overly excessive. On my initial reading of the evidence before me, I identified a number of concerns in that regard. Understandably, given the Council's position, the appellants did not provide detailed evidence on that point in their initial written submissions on the appeal. I therefore considered that I had insufficient information on that point to reach an informed decision. Accordingly, I invited the appellants to make further written submissions on that specific point. A Supplementary Appeal Statement to address those points was submitted on 1 October 2021, and I have taken that into account.

8. Having regard to the above, I consider that there are two main points that I need to address:

   - would the proposed outbuilding be located within the residential curtilage of property known as Bracken Hill, and
   - could the accommodation within the proposed outbuilding be considered to be reasonably required for purposes incidental to the dwellinghouse as such.

Residential curtilage

9. There is no all-encompassing, authoritative definition of the term 'curtilage'. The matter has been the subject of extensive case law over the years, but the main principles derived from that case law have been distilled in the judgment

of the High Court in *Challenge Fencing Ltd. v SSHCLG* [2019] EWHC 553 (Admin). In summary, those principles are:

i) The extent of the curtilage of a building is a question of fact and degree

ii) The three 'Stephenson' factors of physical layout, the ownership past and present, and the use or function of the land or buildings, past and present must be taken into account

iii) A curtilage does not have to be small, but that does not mean that the relative size between the building and its claimed curtilage is not a relevant consideration

iv) Whether the building or land within the claimed curtilage is ancillary to the main building will be a relevant consideration

v) The degree to which the building and the claimed curtilage fall within one enclosure is relevant

vi) The relevant date on which to determine the extent of the curtilage is the date of the application; but this will involve considering both the past history of the site, and how it is laid out and used at the time of the application itself.

10. Applying the principles set out in *Challenge Fencing* to this case, I note firstly that the land is within the single ownership of the appellants. It was also in the single ownership of the previous owner for a period of some 25 years.

11. The land on which the proposed outbuilding would be sited has a close physical relationship to the remainder of the appellants' land and the main dwelling, being accessed from the latter by steps that form part of a rockery. It is contiguous with the areas of garden to the north and to the south of the dwelling. At the date on which the application was submitted, the land was largely laid to lawn and formed part of the appellant's garden. These is a children's play area immediately to the north which also forms part of the appellants' garden. The Council questions whether this was the position in the past, and I return to that matter below.

12. The area surrounding the dwelling is not small, but the main dwelling itself is relatively substantial. The area of land is commensurate with a house of that size. At the time the application was submitted, the land around the building was enclosed as one parcel and not internally segregated. At that time, the land was being used for purposes ancillary to the main dwelling: i.e it formed part of the garden to that property.

13. The judgment in *Challenge Fencing* confirms that the relevant date on which to determine the extent of the curtilage is the date of the application, but that this will involve considering the past history of the site. Turning then to the Council's view on the past history of the site, the Officer Report starts from the premise that the issue of whether the proposed building falls into the curtilage of the property is different from what is the planning unit but then, on my reading, conflates the two matters.

14. The Council's Officer Report relies solely on photographic evidence. The aerial photograph taken in 1971-73 does appear to show the garden area to Bracken Hill tightly drawn around the dwelling, with the principal garden area being

immediately to the north of the house but with no obvious association or linkage with the surrounding land. There is a very clear difference in appearance of the garden area in front of the dwelling compared with the land outside the boundary to the west.

15. By 1993-2003, that situation had changed. The land to the immediate west of the dwelling had by then been enclosed, such that it appears to form a single parcel of land that includes the main dwelling. It is clear that a hedge separates the land to some extent, but there are significant gaps in that hedge which clearly provide linkage to the land by then enclosed. There is no domestic paraphernalia on the land to the west, but by that time there is no discernible difference in the appearance of the land in front of the dwelling and that to the immediate west. By contrast, there is a distinct difference in appearance to the land then immediately to the west of the land enclosed.

16. The Council consider that the aerial photograph taken 2010 clearly shows a clear difference between the domestic area to the east and the area to the west. The principal difference between the two areas, it seems to me, is that the area to the east is by then more heavily planted than in the previous photograph. The area to the west is still open, and the gaps in the hedges are present providing a clear link between the two areas. The steps within the rockery, which also appear to be present in the previous photograph, are more clearly visible in this photograph. There is again a distinct difference in appearance to the land immediately to the west of the land enclosed.

17. In my interpretation, the photographs taken in 1971-73 show that the land to the west of Bracken Hill was clearly outside the residential curtilage of the dwelling at that time. However, by 1993-2003 the land to the west had been incorporated with that to the east to form one parcel of land. It had a clear linkage with the eastern part of the site and an intimate relationship with the main dwelling. The situation remained broadly unchanged in 2010. On the aerial photographs alone, by that time the land had the appearance of forming part of the curtilage of Bracken Hill and on the balance of probability had done so since 1993-2003.

18. The appellants have provided a series of photographs taken between 2012 and 2018 showing various family events at Bracken Hill. Insofar as the land and garden are visible, those photographs show the land to the immediate west of the dwelling as garden land. The activities taking place in those photographs are incidental to the enjoyment of the dwelling as such. Several of those photographs show the steps through the rockery between the dwelling and the land to the west of the dwelling being used as a garden. The appellants have also provided photographs from the sales particulars when the property was marketed in 2009, both of which show the land to the to the immediate west of the dwelling as a garden. This evidence reinforces that of the aerial photographs.

19. There are also the statutory declarations of Mrs Gouge and Mr Dentith. In her Statutory Declaration, Mrs Gouge confirms that the whole of the land edged in red on the application plan has been used as a domestic garden for personal and private enjoyment since May 2011, when the family began living at the property. Mr Dentith, a gardener employed by the previous owners of the property, confirms that from 2005 onwards he mowed, weeded, trimmed and fed the lawns, borders, shrubs and hedges across all the land.

20. The Council has presented no evidence of its own to contradict that of the appellants or make their version of events less than probable. Consequently, having regard to the above, I conclude that as a matter of fact and degree the land on which the proposed outbuilding would be located fell within the residential curtilage of property known as Bracken Hill on the date on which the application was submitted.

Reasonably required for purposes incidental to the dwellinghouse as such

21. Class E, Part 1, Schedule 2 of the GPDO permits the provision within the curtilage of a dwellinghouse of any building or enclosure, swimming or other pool *required* for a purpose incidental to the enjoyment of the dwellinghouse as such (emphasis added). It is settled case law that the keynote is reasonableness[1]. Case law establishes that what is abnormal is not necessarily unreasonable, but also that what could be regarded as incidental does not depend on the unrestrained whim of the occupier. It is therefore not a question of the minimum size that is necessary to provide for a purpose incidental to the enjoyment of the dwellinghouse: it is a question of what is genuinely and reasonably required.

22. In inviting further comments from the appellants on this matter, I identified four points on which I specifically wanted further information on. These were:

    1. The need for/size of the garage, given the existence of the garage attached the host property

    2. The size of the gym, and why the gym cannot be provided within the main dwelling

    3. The size of the 'Pool Change' space

    4. The amount of circulation space/seating areas around the pool

23. In relation to the garage, the main dwelling currently includes an attached double garage. The appellants advise that the garage currently accommodates storage cupboards for tools and outdoor domestic items along one wall and that there are utilities meters and distribution boards along another. These reduce the internal space available for car parking. The garage provides storage for a tractor mower (and limited other domestic equipment) used to maintain the garden and this leaves space for parking one (average sized) domestic car.

24. The appellants explain that the existing garage is far from ideal for any of their vehicles. The family currently owns three cars. One of those cars measures 4.5m in length by 1.9m width. The other two both measure just over 5m in length and 2m in width. The appellants therefore consider that there is an absolute need as a minimum for 2 additional above average-sized garage spaces to accommodate these cars and to allow access to both driver and passenger doors to be opened comfortably. The proposed outbuilding includes a larger double garage to accommodate those vehicles in addition to the existing garage.

25. The revised site layout drawing submitted with the application (Drawing No. bh-300519/01/A) shows a 2-car garage. The drawing is annotated with

[1] *Emin v Secretary of State for the Environment* [1989] J.P.L. 909

dimensions, which indicate that externally the garage measures 8.25 metres by 7.38 metres. This appears excessive to accommodate two standard family size cars, that being the basis of my initial concern. However, on the basis of the information provided in the appellants' Supplementary Appeal Statement, I now understand that two of the cars currently owned by the family are larger than average. I can therefore accept that the additional width is necessary to allow sufficient space to comfortably open the doors of those particular cars. On that basis, I am now satisfied that the size of the double garage in the proposed outbuilding is reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.

26. I accept the appellants' explanation why the gym cannot be provided within the main dwelling. I can also understand the appellants' preference for the gym to be located in the outbuilding where it would be commonly used in connection with the other leisure facilities proposed, particularly the swimming pool. I can also accept that the gym is now of size that is comparable to other examples quoted in the appellants' Supplementary Appeal Statement as being found to reasonably required for purposes incidental to the enjoyment of the dwellinghouse as such.

27. Similarly, I can accept that the size of the 'pool change' space, whilst in my view generous, would be reasonably sized for domestic use in this context.

28. The poolside seating/circulation area is not so straightforward. I have no difficulty with the width of the circulation space around the pool itself, but the size of the poolside seating area immediately strikes me as being excessive in relation to the size of the outbuilding and the main dwelling itself.

29. I fully accept the appellant's explanation that the pool area is intended to be for leisure use rather than solely for the purpose of exercising, and would be regularly used to entertain extended family and friends as well as being used on a day-to-day basis by the family themselves. I also understand that the poolside seating area does not seek to provide space for all potential guests and that the circulation space around the pool would partly form an indoor-outdoor transition and route for dry-clothed guests to access toilet facilities in the changing room when the doors are open.

30. The appellants consider that the proposed poolside seating is reasonable in the context of the overall function of the pool area and the particular circumstances of the family's lifestyle. Therein lies my concern. The poolside seating area is proposed, it seems to me, on the basis of an unrestrained whim on the part of the appellants to meet their personal aspirations. The size of the poolside seating area reflects that personal aspiration rather than being directly proportional to the size of the main dwelling.

31. The matter is finely balanced. In other circumstances, I might have concluded that the poolside seating area was disproportionate to the size of the swimming pool itself and could not be considered as being reasonably required for purposes incidental to the dwellinghouse as such. However, on the basis of the additional information provided in the appellant's Supplementary Appeal Statement, I consider that the poolside seating area and indeed the outbuilding as a whole can be considered to be reasonably required for purposes incidental to this particular dwellinghouse. I therefore conclude that the outbuilding does constitute development permitted by Class E, Part 1, Schedule 2 of the GPDO.

Conclusion

32. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the proposed outbuilding was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Formal Decision

33. 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.

Paul Freer
INSPECTOR

The Planning Inspectorate

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 4 November 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and edged red on the plan attached to this certificate, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reasons:

The proposed orangery to rear of the existing house constitutes development permitted by Class A, Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

The proposed outbuilding to provide garaging, pool complex and gym constitutes development permitted by Class E, Part 1, Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015.

Signed

Paul Freer

Inspector

Date: 27 October 2021
Reference: APP/R0660/X/20/3264261

First Schedule

An orangery to rear of existing house plus outbuilding to provide garaging, pool complex and gym (as shown on Drawing Nos. bh-300519/01A; bh-300519/02B; and bh-300519/03B)

Second Schedule

Land at Bracken Hill, Mottram Road, Alderley Edge SK9 7JF

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.

The Planning Inspectorate

Plan

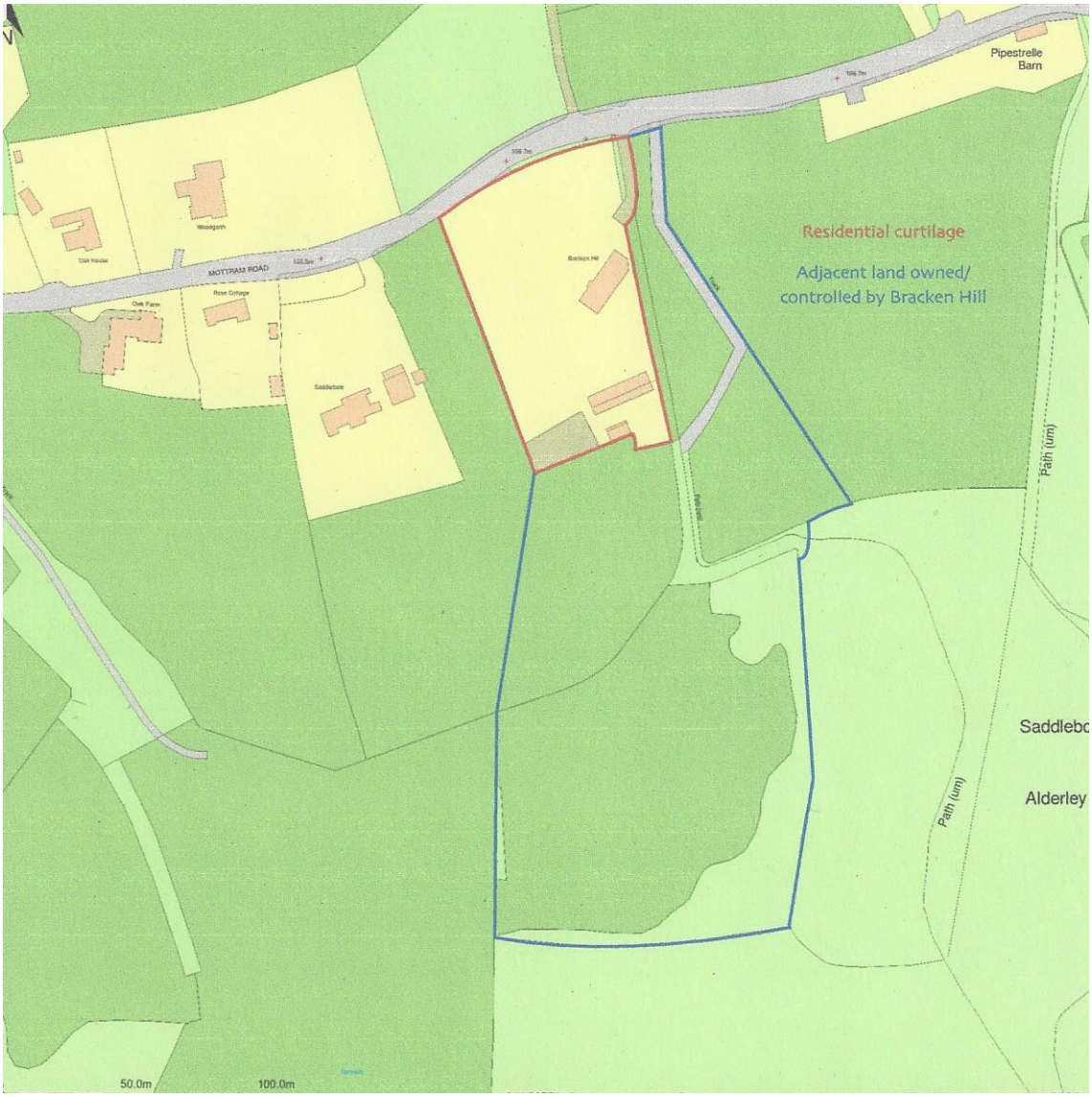
This is the plan referred to in the Lawful Development Certificate dated: 27 October 2021

By Paul Freer BA (Hons) LLM PhD MRTPI

Land at: Bracken Hill, Mottram Road, Alderley Edge, SK9 7JF

Reference: APP/R0660/X/20/3264261

Scale: Not to scale



The Planning Inspectorate

Costs Decision

Site visit made on 7 September 2021

by Paul Freer BA (Hons) LLM PhD MRTPI

an Inspector appointed by the Secretary of State

Decision date: 27 October 2021

Costs application in relation to Appeal Ref: APP/R0660/X/20/3264261
Land at Bracken Hill, Mottram Road, Alderley Edge, SK9 7JF

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Mr & Mrs Gouge for a full award of costs against Cheshire East Council.
- The appeal was against the refusal of a certificate of lawful use or development (LDC) for an orangery to rear of existing house plus outbuilding to provide garaging, pool complex and gym.

Decision: the application is granted in the terms set out below

Reasons

1. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. The Planning Practice Guidance indicates that one of the aims of the costs regime is to encourage all those involved in the appeal process to behave in a reasonable way and to follow good practice. The Planning Practice Guidance provides examples of unreasonable behaviour which may result in an award of costs against a Local Planning Authority. These include preventing or delaying development which should clearly be permitted; failure to produce evidence to substantiate each reason for refusal on appeal; and acting contrary to, or not following, well-established case law.

2. The essence of the appellants claim for costs is that they have been put to unnecessary expense and delay through having to appeal when the LDC should have been granted by the Council. I am inclined to agree.

3. The only indication available of the Council's consideration of the application is contained in the Officer Report. The latter sets out a reasonable analysis of the case law in relation to the definition of 'curtilage' albeit, I note, there is no reference there to the judgment of the High Court in *Challenge Fencing Ltd. v SSHCLG* [2019] EWHC 553 (Admin) that was issued in March 2019. The Officer Report then correctly identified that the issue of whether the proposed building falls into the curtilage of the property is different from what constitutes the planning unit.

4. However, having set out the correct framework for consideration of the main issues, on my reading the Officer Report then conflates the considerations of

curtilage and use. Moreover, the Officer Report does not deal adequately with the available evidence.

5. The appellants criticise the Council's interpretation of the aerial photographs, and in particular the reliance placed on the photograph taken in 1971-73. If those aerial photographs had been the only evidence available to the Council in its consideration of the application, then in my view the Council would have been perfectly entitled to rely upon its own interpretation of those photographs and to reach a conclusion on that basis. But that was not the only evidence before the Council.

6. The applicants had provided two Statutory Declarations from people who had direct knowledge of the site over many years. Those Statutory Declarations were important evidence that attracted substantial weight in evidential terms, but did not even receive a mention in the Officer Report.

7. Then there was the series of photographs taken by the applicants of various family functions held at Bracken Hill between 2012 and 2018. The Officer Report concludes that the use was only occasional and that no evidence had been supplied to show that the photographs were taken on the land claimed in the application to be within the curtilage of the dwelling and not elsewhere within the property. The Officer Report goes on to suggest that the use of this area appears to have been sporadic at best and does not suggest a continuous change of use to residential.

8. That, in my view, is a remarkable statement to make and is wholly unsupported by evidence. The photographs taken in the summer months all show a closely mown lawn across a large part of the site. If the use was truly sporadic, the implication is that the lawned area was specifically mown for each occasion that the use took place. I can understand that some items visible in those photographs, such as the garden furniture and inflatable play equipment, were taken onto the land specifically for those events. But it seems wholly implausible that such a large area of lawn was only mown for occasional family functions.

9. Furthermore, those photographs clearly show features on the site: for example, the steps through the rockery, the line of trees on the boundary and the long-established permanent play area at the end of the garden. On the assumption that the case officer visited the site before writing that report, it should have been evident that those photographs were taken on the land in question. If the case officer had not visited the site before writing the Officer Report, that in itself would represent a major failing in the Council's determination of the application.

10. The Council's error, it seems to me, is that the applicants' evidence was not considered holistically. Had it done so, the Council may have, and in my view should have, reached the conclusion that the land did fall within the curtilage of the dwelling known as Bracken Hill on the date the application was made. Moreover, the Council had no evidence of its own to contradict that of the applicants or make their version of events less than probable.

11. For that reason, I cannot accept the Council's response that it reached a reasonable decision, based on the information provided. In my view, the Council did act unreasonably in not properly considering all the available evidence and by not substantiating the reason for refusal on appeal.

12. I am mindful that the Council did not share my initial concerns about whether the outbuilding was reasonably required for purposes incidental to the dwellinghouse as such. In my view, the applicants are therefore correct in their belief that the LDC should have been granted by the Council and that the entire appeal was unnecessary.

13. The Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs may only be awarded against a party who has behaved unreasonably and thereby caused the party applying for costs to incur unnecessary or wasted expense in the appeal process. In this case, the applicants have clearly incurred unnecessary or wasted expense in submitting the appeal and the supporting documentation. Accordingly, both criteria have been met and a full award of costs is justified.

Costs Order

14. In exercise of the powers under sections 195, 320 and Schedule 6 of the Town and Country Planning Act 1990, and section 250(5) of the Local Government Act 1972, and all other enabling powers in that behalf, IT IS HEREBY ORDERED that Cheshire East Council shall pay to Mr & Mrs Gouge, the full costs of the appeal proceedings described in the heading of this decision.

15. The applicants are now invited to submit to Cheshire East Council, to whom a copy of this decision has been sent, details of those costs with a view to reaching agreement as to the amount. In the event that the parties cannot agree on the amount, a copy of the guidance note on how to apply for a detailed assessment by the Senior Courts Costs Office in enclosed.

Paul Freer
INSPECTOR

The Planning Inspectorate

Appeal Decision

by D Fleming BA (Hons) MRTPI

an Inspector appointed by the Secretary of State

Decision date: 20 May 2021

Appeal Ref: APP/Z5060/X/20/3260503
31 Amesbury Road, Dagenham RM9 6AA

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Garan Davis against the decision of the Council of the London Borough of Barking & Dagenham.
- The application Ref 20/01699/CLUP, dated 24 August 2020, was refused by notice dated 2 September 2020.
- 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 the erection of a single storey outbuilding in the rear garden with a flat roof and a maximum height of 2.5m from the natural ground level.

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 considered to be lawful.

Preliminary Matters

2. It has not been necessary to carry out a site visit as, in this particular case, where all the information needed is included with the application and appeal documents, a decision can be reached on the papers.[1]

Main Issue

3. The main issue is whether the Council's decision to refuse to grant a certificate of lawful use or development was well-founded.

Reasons

4. The appeal relates to a modest, two storey, end of terrace property occupied by the appellant, his partner and their two children. There is a rear garden that extends well beyond the side of the house which is approximately 240sqm in area.

[1] The Procedural Guide - Certificate of lawful use or development appeals – England, dated November 2020, states at paragraph A.9.4. "Where the appeal concerns a case, which will be decided purely on the basis of technical and/or legal interpretation of the facts, the Inspector may decide the case without a site visit." In addition, Footnote 12 within Appendix F states that a small number of appeals do not require a site visit and can be dealt with on the basis of the appeal documents.

5. The appellant holds a diploma in sculpture which he has practiced in his free time by renting an art studio. The cost of this has escalated recently and so he now wishes to erect an outbuilding at the bottom of his garden so that he can continue his hobby at home. The outbuilding would be 6.5m in depth and 8.2m in width with a height of 2.5m. Inside there would be four rooms: a sculpture room (14.85sqm), a stone carving/casting room (11.25sqm), a home office (9.9sqm) and a storeroom (7.5sqm). The home office would be for his partner as there is no space within the dwelling for an office, other than in the lounge, which is difficult to accommodate with two children. The storeroom would replace the space occupied by an existing dilapidated garden shed and would be used to store bikes, garden furniture and garden equipment.

6. The Council's reason for refusal is that the use of the outbuilding would not be incidental to the enjoyment of the dwelling. As such, it would not accord with Class E, Part 1, Schedule 2 of the Town and Country Planning (General Permitted Development)(England) Order 2015 (GPDO).

7. Class E of the GPDO grants planning permission for any building or enclosure, swimming or other pool, within the curtilage of a dwelling for purposes incidental to the enjoyment of the dwelling as such. This is subject to certain conditions and limitations. The parties agree that the proposed outbuilding would not contravene any of the specific physical requirements or limitations set out in Class E and I see no reason to take a different view.

8. The Council are concerned that the proposed use for sculpture/stone carving and casting would not be an incidental use as the appellant used to rent an art studio to carry out these activities. They make no comment about the home office use or the storeroom use. Although not referred to in the Council's decision letter, the officer report on the application sets out conflicting views on the acceptability, or otherwise, of the size of the outbuilding. On the one hand it is stated that as it would occupy only 22% of the rear garden area, this would be acceptable. On the other hand, it states the footprint of the outbuilding would be greater than the footprint of the dwelling, which would make it a significant building.

9. When evaluating whether the development is reasonably required for the enjoyment of the dwelling house as such, matters such as personal preference are not conclusive factors. The matter also does not rest on the unrestrained whim of the householder. A sense of objective reasonableness is required in all the circumstances of the particular case.[2] The building will not necessarily be reasonably required just because the householder says it is and it is for an appellant to show it is reasonably required and designed with incidental uses in mind, having regard to the circumstances. This is because there is no statutory definition of "incidental" in the GPDO.

10. I find the proposed uses of home office and storeroom would be incidental to the enjoyment of dwelling. The appellant has shown that these uses are reasonably required and the proposed space that would be allocated to these uses would not be excessive. They are examples of incidental uses in typical spaces enjoyed by many householders.

11. The desire for space for a sculpture room and a stone casting/carving room is unusual but the novelty of the use does not necessarily mean it would be

[2] Emin v SSE & Mid Sussex DC [1989] EGCS 16

unacceptable. The appellant has explained it is his hobby, that he has full time employment elsewhere and his submissions outlined the need for two rooms. This is due to the dust and mess created in the activity and the need to store and use bulky equipment and materials, such as: work benches, vices, stone, clay, plaster and wood. The proposed areas involved would be between the size of a single and double garage. Such spaces are often found within the curtilage of a property and are re-purposed for a variety of uses. Common examples include using the space to store and restoring a classic car, use of the space for model railway layouts as well as the ubiquitous games room with a competition size snooker table. If the Council had concerns over the floor area proposed for the uses, then it is my view they are not clearly made out.

12. As to the idea that where a hobby is practiced effects whether it could be considered to be a hobby, this has not been substantiated by the Council. The examples provided by the appellant of paying for gym membership or installing a gym at home or paying to rent a music studio or practicing with band members at home illustrate that there is very little or no weight in the Council's argument.

13. In conclusion, it is considered that the appellant has demonstrated that the proposed outbuilding is reasonably required, and also designed with incidental uses in mind. As there is no disagreement over whether the physical criteria of Class E are met, I find that the proposed outbuilding would be permitted development.

Conclusion

14. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a single storey outbuilding in the rear garden with a flat roof and a maximum height of 2.5m from the natural ground level was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

D Fleming

INSPECTOR

The Planning Inspectorate

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 24 August 2020 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, would have been lawful within the meaning of section 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The construction of the outbuilding constitutes development within the meaning of section 55 of the Act for which planning permission is required. Planning permission is granted by Article 3(1) of the Town and Country Planning (General Permitted Development) (England) Order 2015 since the development falls within Class E of Part 1, Schedule 2 and is thus permitted development.

Signed

D Fleming
Inspector

Date 20 May 2021
Reference: APP/Z5060/X/20/3260503

First Schedule

The erection of a single storey outbuilding in the rear garden with a flat roof and a maximum height of 2.5m from the natural ground level in accordance with drawing numbers: Site location plan – dated 13 August 2020, Proposed site plan – dated 13 August 2020, Proposed elevations – 001, dated August 2020 and Proposed floor plan – 002, dated August 2020.

Second Schedule

Land at 31 Amesbury Road, Dagenham RM9 6AA.

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.

The Planning Inspectorate

Plan

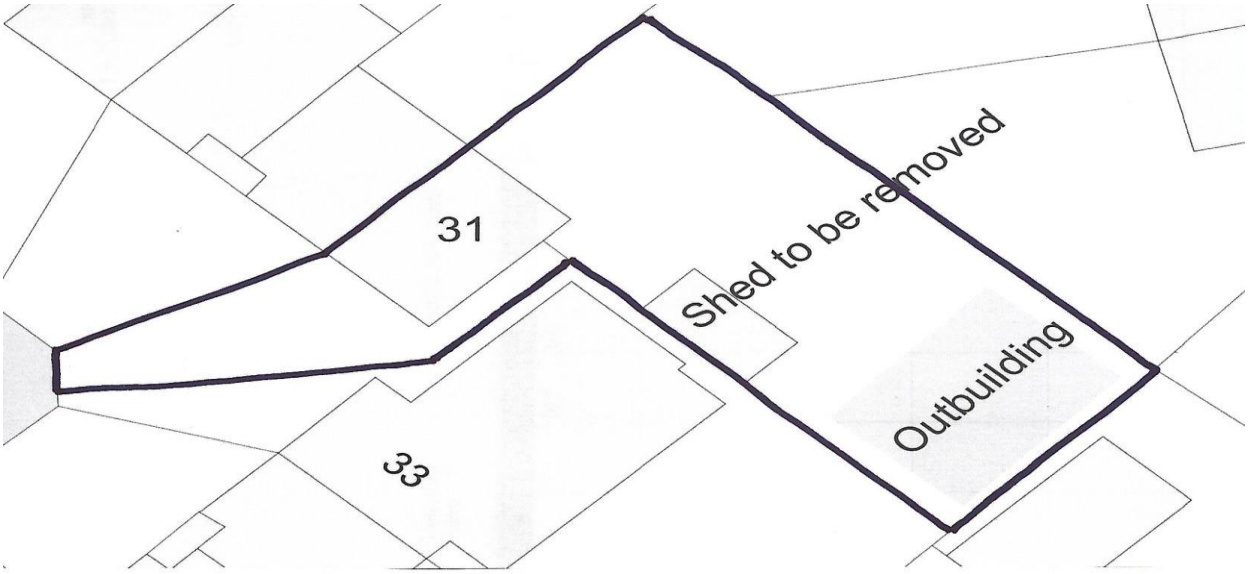
This is the plan referred to in the Lawful Development Certificate dated:

by D Fleming BA (Hons) MRTPI

Land at: 31 Amesbury Road, Dagenham RM9 6AA

Reference: APP/Z5060/X/20/3260503

Scale: not to scale



The Planning Inspectorate

Appeal Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 12TH July 2021

Appeal Ref: APP/A5270/X/21/3266441
5 The Bye, Acton, London, W3 7PG

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Felix Akiga against the decision of the Council of the London Borough of Ealing.
- The application Ref 2042007CPL, dated 17 October 2020, was refused by notice dated 10 December 2020.
- 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 erection of rear outbuilding for use incidental as a gym and home office/storage.

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 considered to be lawful.

Preliminary Matter

2. I consider that this appeal can be determined without the need for a physical site visit given the written submissions and nature of the appeal. Neither the Council nor the appellant have raised objections to the appeal proceeding on this basis.

Application for costs

3. An application for a full award of costs was made by the appellant against the Council. This application is the subject of a separate decision.

Main Issue

4. The main issue is whether the Council's refusal to issue a certificate of lawfulness was well-founded. The Council's reason for refusal was that '*The proposal would not fall within the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development) Order 2015 ('the GPDO'). It is therefore not lawful and planning permission would be required.'*

5. In order to be successful in this appeal the appellant must show that the development would fall within the provisions of Schedule 2, Part 1, Class E of

the GPDO in that the proposed outbuilding would be within the curtilage of the dwellinghouse at 5 The Bye ('No.5') and for a purpose incidental to the enjoyment of that dwellinghouse. The Council accepts that the proposed development is within the curtilage of No.5 and would not exceed the limitations set out in E.1 (in terms of the height, location and proportion of the curtilage covered and other limitations) and I do not need to consider these further.

6. The Council's reason for refusal was predicated on the size, scale and layout of the proposed development and they calculated the footprint at around 41sqm (which is not contested by the Appellant although they argue that the internal floorspace is less). The Council concluded that the scale of the proposed outbuilding would mean that the use could not be considered as incidental to the enjoyment of the dwellinghouse when compared to the original footprint of the ground floor. The application for the proposed development included plans that showed its intended configuration as a gym and attached shower and toilet. The description on the appeal and the statement submitted by the appellant describes the outbuilding for use incidental as a gym and home office/storage and the plans submitted during the appeal indicate an additional internal wall to partition the original gym area to provide two separate rooms. The proposed size, scale and external treatments have not changed since the application stage. The Council has not raised any objection to the internal plans being changed in this way.

7. An essential feature of an incidental use is that it should have a functional relationship with the primary use (in this case the residential use of the dwellinghouse) and that the relationship is one that is normally found. Caselaw holds that this assessment will be a matter of fact and degree in each instance, but the use cannot be for a primary residential purpose, and that regard should be had to not only the use but also the nature and scale of that use.

8. Whilst the floor area in this case is fairly large in proportion to both the original and existing ground floor areas of No.5, it is less so when considered in the context of the overall size the dwellinghouse (which also includes the first floor). A gym and office use can be associated with residential use and the attached shower room and toilet alone is not enough to show a primary residential use of the outbuilding (which would prevent it from being an ancillary use). I am therefore satisfied on balance that the proposed building is genuinely and reasonably required to accommodate these uses which are for purposes incidental to the enjoyment of the dwellinghouse, and not excessive in scale in relation to it.

9. For the reasons given above I conclude, on the evidence now available, that the Council's refusal to grant a certificate of lawful use or development in respect of the erection of a rear outbuilding for use incidental to the dwellinghouse as a gym and home office/storage was not well-founded and that the appeal should succeed. I will exercise the powers transferred to me under section 195(2) of the 1990 Act as amended.

Zoë Franks

INSPECTOR

The Planning Inspectorate

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 17 October 2020 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason:

The proposed outbuilding in the rear garden would be permitted development falling within the provisions of Schedule 2, Part 1, Class E of the Town and Country Planning (General Permitted Development)(England) Order 2015.

Signed

Zoë Franks
Inspector

Date **12th July 2021**
Reference: **A5270/X/21/3266441**

First Schedule

Erection of rear outbuilding for use incidental to the dwellinghouse as gym and home office/storage as shown on drawings: ZAAVIA/5TB/201 Issue B, ZAAVIA/5TB/202 Issue A, ZAAVIA/5TB/203 Issue A and ZAAVIA/5TB/205 Issue A

Second Schedule

Land at 5 The Bye, Acton, London, W3 7PG

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 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, 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 operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The Planning Inspectorate

Plan

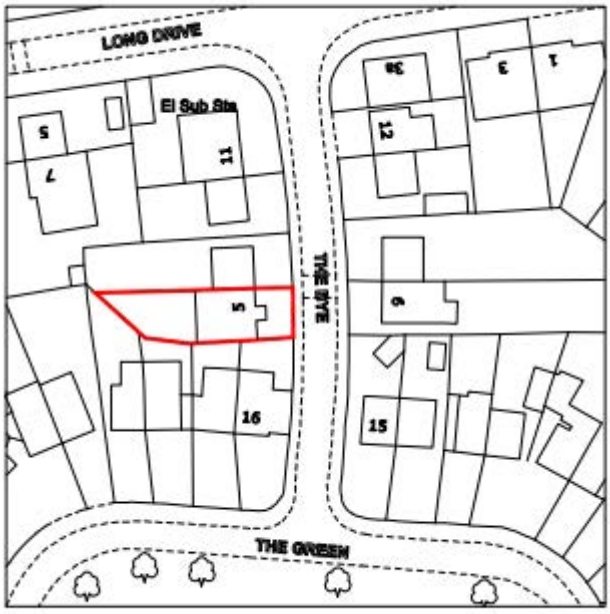
This is the plan referred to in the Lawful Development Certificate dated:

by Zoë Franks, Solicitor

Land at: 5 The Bye, Acton London, W3 7PG

Reference: APP/A5270/X/21/3266441

Scale: Not to scale



The Planning Inspectorate

Costs Decision

by Zoë Franks Solicitor

an Inspector appointed by the Secretary of State

Decision date: 21st July 2021

Costs application in relation to Appeal Ref: APP/A5270/X/21/3266441
5 The Bye, Acton, London, W3 7PG

- The application is made under the Town and Country Planning Act 1990, sections 195, 322 and Schedule 6 and the Local Government Act 1972, section 250(5).
- The application is made by Felix Akiga for a full award of costs against the Council of the London Borough of Ealing.
- The appeal was against the refusal of the Council to issue a certificate of lawful use or development for the erection of a rear outbuilding for use as a gym and home office/storage.

Decision

1. The application for an award of costs is refused.

Reasons

2. Planning Practice Guidance advises that, irrespective of the outcome of the appeal, costs can only be awarded where a party has behaved unreasonably and that unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process.

3. The applicant's cost application is on the basis that the Council incorrectly calculated the relative size of the proposed outbuilding with the existing dwellinghouse as they failed to take into account the built extensions; but that they also made their assessment based on the footprint of the proposed outbuilding rather than the internal area. The applicant also submits that the Council cast aspersions on the Appellant's intentions in relation to the use of the outbuilding as a separate dwelling with no evidence, failed to participate fully in the appeal process or to provide a proper justification for its decision and failed to follow established precedent and caselaw.

4. The applicant agreed that the footprint area of the outbuilding would be around 41 sqm (as used by the Council) even if the proposed internal area would be around 35 sqm. The issue of whether the purpose is incidental to the enjoyment of a dwellinghouse is a matter of planning judgement as confirmed by caselaw, and the internal layout and proposed use of the outbuilding has changed since the original application in that the home office/storage use has been added. The Council did not behave unreasonably in making their decision based on the information that they had, notwithstanding that my decision was that it was not well-founded and the certificate of lawful development should be granted. The Council is not obliged to submit addition evidence during the

appeal and can rely on its decision notice if it so wishes. It is not strictly bound by other appeal decisions which will also have been determined depending on their specific facts.

5. I therefore find that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the Planning Practice Guidance, has not been demonstrated.

Zoë Franks

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 22 October 2020

by Timothy C King BA (Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 07 December 2020

Appeal Ref: APP/C3620/X/20/3248194
Routh, Charlwood Road, Horley, RH6 0AJ

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Nick Sherard against the decision of Mole Valley District Council.
- The application Ref MO/2019/2100, dated 26 November 2019, was refused by notice dated 22 January 2020.
- 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 erection of ancillary leisure outbuilding.

Decision

1. The appeal is allowed and attached to this decision is a certificate of lawful use or development describing the existing use which is considered to be lawful.

Application for costs

2. An application for costs was made by Mr Nick Sherard against Mole Valley District Council. This application is the subject of a separate decision.

Preliminary Matters

3. The relevant date for the determination of lawfulness is the date of the LDC application, i.e. 26 November 2019. The matter to be decided upon is whether the development, if carried out at that date, would have been lawful. The determination is to be made against the Town and Country Planning (General Permitted Development) (England) Order 2015 (as amended) as subsisted at the time of the application which, hereafter, I shall refer to as "the GPDO".

4. In an appeal under s195 of the Act against the refusal of a LDC the planning merits and/or impacts of the matter applied for do not fall to be considered. As such, although the site lies within the Metropolitan Green Belt this is not material to the application.

5. Instead, the decision is based strictly on the evidential facts and on relevant planning law. The burden of proof is on the appellant, and I shall reach my decision on the various evidence before me and also observations at my site visit.

Main Issue

6. The legislation, under Article 3, Schedule 2, Part 1, Class E of the GPDO, grants planning permission for, amongst other things, any building or enclosure, swimming or other pool required for a purpose incidental to the enjoyment of the dwellinghouse.

7. The GPDO's Technical Guidance document, which provides clarification as to the interpretation of householder permitted development (PD) rights, indicates that Class E also allows, subject to certain conditions and limitations, a large range of other buildings on land surrounding a house, as long as they can be properly be described as having a purpose incidental to the enjoyment of the house

8. The main issue in this appeal is whether the Council's decision to refuse the LDC was well founded.

Reasons

9. Both main parties agree that from the submitted plans/drawings the relevant provisos under E.1, E.2 and E.3 would be met. The only issue of contention in this appeal is the Council being of the view that it has not been demonstrated that all or some of the activities could not be provided within the main house or the existing outbuildings. The appellant argues otherwise.

10. Routh itself is a two-storey dwellinghouse which is set within a sizeable curtilage. At my site visit I also observed a series of timber outbuildings in the rear garden which appeared to be in use for storing items consistent with general domestic and garden purposes. The dwelling itself appears to have been significantly extended.

11. The proposal would involve the erection of a timber-framed pitched roof building, measuring some 12.3m x 7.9m, and set in over 2m from the common boundary with Warwick Cottage. It would accommodate a garden room, games room, small cinema room, sauna, hot tub, toilet, shower and changing area. In order for the building to house the said facilities the rooms themselves are somewhat modest in floorspace size.

12. The courts have held that the term "required" in this part of the GPDO should be interpreted to mean "reasonably required." In the judgement of *Emin v SSE and Mid Sussex DC* [1989] JPL 909 it was held that when deciding whether the proposed use of a building would be incidental to the enjoyment of the dwellinghouse it was necessary to consider whether the building is genuinely and reasonably required or necessary to achieve that purpose. The proposed outbuilding will not necessarily be required just because the householder says it is and it is for the appellant to show it is reasonably required and designed with incidental uses in mind. The keynote is 'reasonableness'.

13. The above principles were reiterated in *Holding v FSS & Thurrock BC* [2004] JPL 1405 and *LB Croydon v Gladden* [1994] 1 PRL 2. In the case of *Holding*, which concerned what might be regarded as a very large incidental building within the curtilage of a dwellinghouse, the Inspector considered that it is reasonable to suppose that the purpose of the permission granted under Class E is to allow for accommodation for hobbies to which people need space in and around their home to be provided without the need for the formality of a

planning application. In the *Gladden* case it was held that for a use to be considered incidental to the enjoyment of a dwellinghouse and exempted from development under s55(2)(d), it must be of a scale and nature that is incidental to the reasonable enjoyment of the normal residential use of the buildings and land which comprise the dwellinghouse and its curtilage.

14. The Council has cited two appeal decisions in an attempt to add support to its decision to refuse the LDC. In a s195 appeal from March 2019 regarding a site at Halesowen involving a similar proposal *(APP/P1805/X/18/3202923)* the Inspector remarked that in cases such as this it is very much a matter of fact and degree based on the specific circumstances of each case, and stated in paragraph 16 of his decision letter:

    "… it seems to me that there are a number of factors relating to whether an outbuilding is incidental. The actual physical size is of some relevance, but that should not be determinative. The relevance of size lies in the indication it may provide of the scale of activities and whether they would be subordinate to the main use of the dwellinghouse. I see nothing in the Emin judgment that leads me to conclude that whether a building is incidental should turn to some extent on the size of the proposed building and the size of the dwellinghouse itself. Indeed, if Class E sought to impose a limit on the size of an outbuilding or its relative size in relation to its host dwellinghouse, it could have done so."

15. The Inspector also made the point that for a building to be considered as permitted development all of it must be required for incidental purposes. In other words, a building which is only in part required for incidental purposes is not incidental to the enjoyment of the dwellinghouse. Although size is not in itself the decisive factor, in the Halesowen case I note that the proposed building would have measured some 375 sqm, with the gym accounting for 78 sqm of the internal floorspace. There is a marked contrast here with that of the current proposal where the external measurements of the building would equate to a relatively modest size of approximately 97 sqm.

16. In concluding, the Inspector commented that, whilst he was satisfied that some of the proposed activities could be said to be incidental, he was not satisfied that, as a whole, the outbuilding would be required for incidental purposes and it would not, therefore fall within the scope of Class E as permitted development

17. The second s195 appeal *(APP/P1805/X/18/3198515)* from 2018 involved a site where an outbuilding was proposed which, amongst other things, would accommodate a swimming pool and plant room, a sensory room, and a bar servery. Although the Inspector regarded the majority of the uses as capable of being incidental to the enjoyment of the dwellinghouse she commented that the bar/servery could be regarded as primary living accommodation and it had not been shown that it was reasonably required or that it could not be accommodated within the main dwellinghouse. This weighed against the proposal, but size was also a consideration here with the proposed building's footprint measuring only some 10sqm sqm less than that of the dwellinghouse itself. Although the appellant had put forward that a family member of the appellant had health needs the Inspector did not consider that a substantial building of some 180 sqm was necessarily required to meet the health needs of the family member or that the uses could not be accommodated in rooms of more modest proportions.

18. Although I have had regard to all the LDC cases referred to, by both parties, whilst points of law will obviously have significant bearing on these, evidential fact will largely relate to the particular factors and circumstances peculiar to each individual case. Hence, the fact and degree considerations. Accordingly, direct parallels between cases are not easily drawn.

19. As mentioned, the Council's reason for refusal indicates a failure to demonstrate that all or some of the activities could not be provided within the main house or the existing outbuildings. However, the majority of the individual rooms' intended functions, as labelled, save perhaps for the intended cinema room which, being rather small in size would be something of a misnoma, are nowadays often found in newly built or converted outbuildings or extensions set aside for leisure purposes. In this context the degree of circulation space, whilst noted, is not a particular concern, nor are the existing individual outbuildings in the rear garden large enough to provide such a consolidated function.

20. It was not possible at my site visit to inspect the accommodation within the main dwelling. Nonetheless, this appeal would not turn solely on whether or not the dwelling is able to contain both the cinema room and games room proposed. It is a good sized house but, even so, and with the type of activities proposed in the outbuilding, it would be wrong to conclude that an outbuilding could not be said to be incidental as such because it would provide more accommodation for secondary activities than the dwellinghouse provides for primary purposes. Also, and this is clearly a consideration, the proposed building could not be seen as relatively disproportionate to the main dwelling.

21. In, therefore, weighing up the various factors and considerations involved, and then applying a test of objective reasonableness, I am satisfied that, as a matter of fact and degree, the totality of the proposed outbuilding is genuinely and reasonably required to achieve the purpose of accommodating the proposed incidental activities.

Conclusion

22. For the reasons given above I conclude, on the evidence available, that on the balance of probability, the proposed building, subject to compliance with the various conditions and limitations of Class E, would also be incidental to the enjoyment of the dwellinghouse. The Council's refusal to issue a LDC was therefore not well-founded and the appeal should succeed. In this respect I will exercise accordingly the powers transferred to me under s195(2) of the 1990 Act as amended.

Timothy C King

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REF. APP/C3620/X/20/3248194
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 192
(as amended by section 10 of the Planning and Compensation Act 1991)

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39

IT IS HEREBY CERTIFIED that on 26 November 2019 the operations described in the First Schedule hereto in respect of the land specified in the Second Schedule hereto and shown edged in red on the plan attached to this certificate would have been lawful within the meaning of section 191(2) of the Town and Country Planning Act 1990 as amended, for the following reason:

The proposed operations described in the first schedule would be permitted development within the terms of Article 3 and Class E within Part 1 and Schedule 2 of the Town and Country Planning (General Permitted Development) (England) Order 2015 as amended.

Timothy C King

INSPECTOR

Date: 07 December 2020

First Schedule

Erection of ancillary leisure outbuilding as shown on drawings 27801-202-BP, 27801-203, 27801-204 and 27801-205 (submitted with application MO/2019/2100PCL, dated 26 November 2019).

Second Schedule

Routh, Charlwood Road, Horley RH6 0AJ

Notes

1. This certificate is issued solely for the purpose of section 192 of the Town and Country Planning Act 1990 as amended.
2. It certifies that the 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, would not have been liable to enforcement action under section 172 of the 1990 Act as amended on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.
4. 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

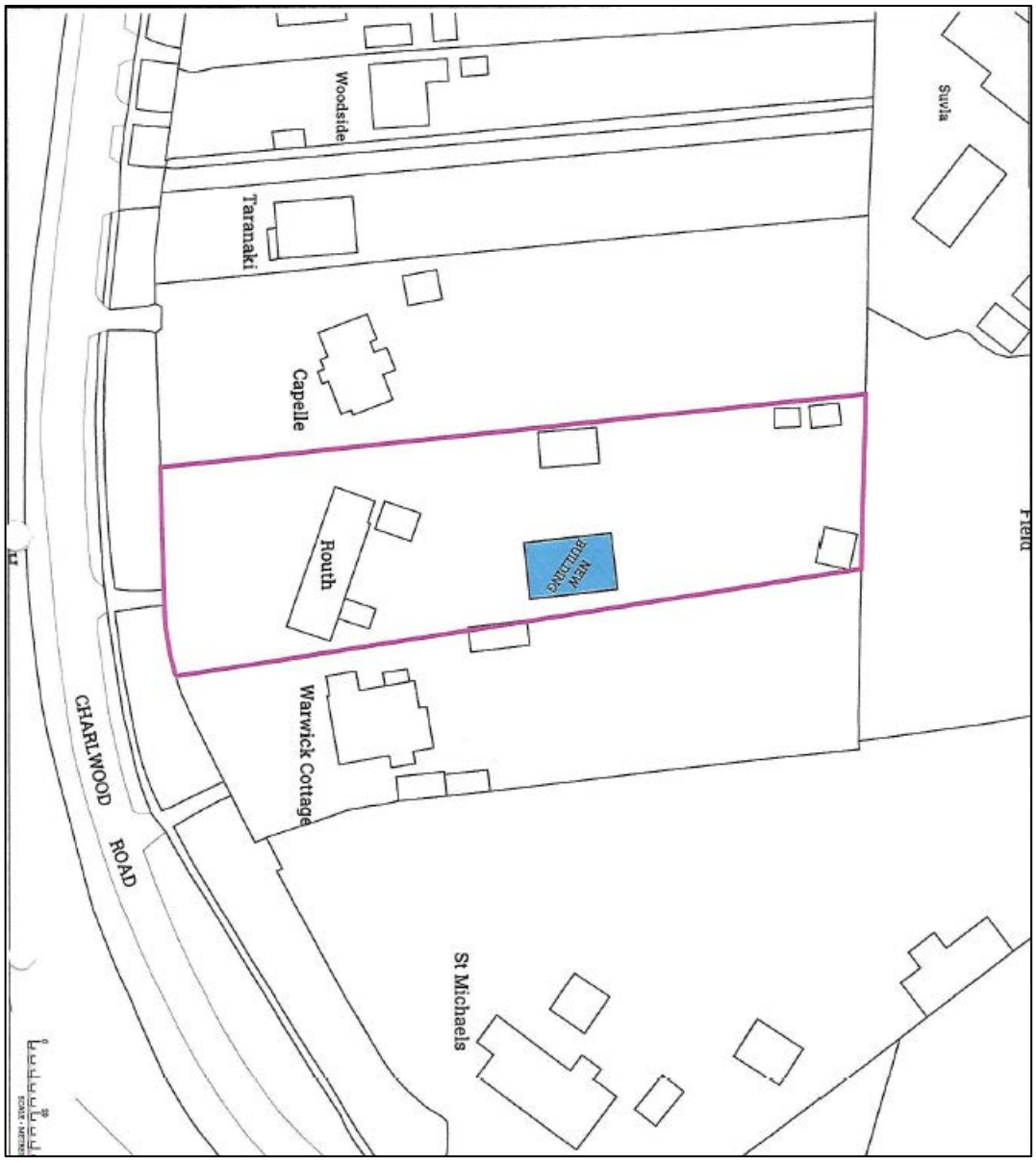
This is the plan attached to the Lawful Development Certificate dated: 07 December 2020

by Timothy C King BA (Hons) MRTPI

Roth, Charlwood Road, Horley RH6 0AJ

Appeal Ref. APP/C3620/X/20/3248194

DO NOT SCALE



The Planning Inspectorate

Costs Decision

Site visit made on 22 October 2020

by Timothy C King BA(Hons) MRTPI

an Inspector appointed by the Secretary of State for Housing, Communities and Local Government

Decision date: 07 December 2020

Costs application in relation to Appeal Ref: APP/C3620/X/20/3248914
Routh, Charlwood Road, Horley RH6 0AJ

- The application is made under the Town and Country Planning Act 1990, sections 78, 322 and Schedule 6, and the Local Government Act 1972, section 250(5).
- The application is made by Mr Nick Sherard for a full award of costs against Mole Valley District Council.
- The appeal was against the Council's refusal to grant a lawful development certificate (LDC).

Decision

1. The application for an award of costs is refused.

Reasons

2. Paragraph 030 of the Planning Practice Guidance (PPG) advises that costs may be awarded where a party has behaved unreasonably and the unreasonable behaviour has directly caused another party to incur unnecessary or wasted expense in the appeal process. The guidance indicates that a local planning authority is at risk of an award of costs if it fails to produce evidence to substantiate its actions.

3. This costs application is concerned, in the main, with the Council having refused to enter into pre-application discussions and, in the applicant's view, being unresponsive and generally unhelpful.

4. S195(2) and (3) of the 1990 Act as amended refer to the Secretary of State's role on appeal as one of being satisfied that the local planning authority's (the Council's) decision is or is not "well-founded". In other words, the appeal itself is confined to the narrow remit of reviewing the LPA's decision. In this particular instance the Council considered that the applicant had failed to demonstrate that all or some of the activities could not be provided within the main house or the existing buildings. In support of its case the Council has taken the approach that the onus was on the applicant to prove his case, on the balance of probability, and not that the authority was required to rebut the applicant's claims.

5. In support of its stance the Council, at the application stage, cited appeal decisions where the appointed Inspectors had found against the respective appellants on this point, amongst others matters. The relevant planning context regarding whether or not a proposed outbuilding would be '*required for a purpose incidental to the enjoyment of the dwellinghouse'* is, in being a matter of fact and degree, one open to interpretation. In such circumstances,

providing the Council is able to amplify its case – which I consider it did in this instance – it was quite entitled to reach the decision it did. The fact that I found otherwise by taking a different approach does not necessarily mean that the Council behaved unreasonably.

6. With the main issue in the appeal being whether or not the Council's decision was well founded my assessment of the case must relate to the decision itself, not the reasons for it. It would clearly be wrong to grant a LDC where the evidence, taken as a whole, suggests that the matter in question is not lawful, even if the Council's original reason(s) can be shown later to be misplaced. Also, as I have mentioned, there are a number of factors involved which need to be weighed up.

7. In deciding this application for an award of costs I must decide whether unnecessary expense has arisen directly from any unreasonable behaviour. Further, unnecessary expense should relate only to the appeal process itself. Whilst I can appreciate why the applicant considered the Council behaved unreasonably - although I would, instead, term it unhelpful – I am also mindful that the applicant's supporting statement at the application stage was largely a matrix tick box exercise rather than a discussion of case law and more compelling representations relating to the individual circumstances of the proposal itself. On this basis, despite what might be seen as a rather less than objective approach, I am satisfied that the Council did not behave unreasonably and, on the evidence, it is not wholly surprising that an appeal ensued.

8. Accordingly, for the reasons given above, I am satisfied that unreasonable behaviour resulting in unnecessary or wasted expense, as described in the PPG, has not been demonstrated.

9. I therefore refuse the application for an award of costs.

Timothy C King

INSPECTOR

The Planning Inspectorate

Appeal Decision

Site visit made on 12 November 2020

by Simon Hand MA

an Inspector appointed by the Secretary of State for Communities and Local Government

Decision date: 24 November 2020

Appeal Ref: APP/C1950/X/20/3256606
102 Harmer Green Lane, Welwyn, Herts, AL6 0ES

- The appeal is made under section 195 of the Town and Country Planning Act 1990 as amended by the Planning and Compensation Act 1991 against a refusal to grant a certificate of lawful use or development (LDC).
- The appeal is made by Mr Gideon Brown against the decision of Welwyn Hatfield Borough Council.
- The application Ref 6/2020/1033/LAWP, dated 7 May 2020, was refused by notice dated 14 July 2020.
- 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 the construction of single storey outbuilding under permitted development with garage, workshop, gym and bicycle & garden maintenance equipment storage, for the purpose of incidental enjoyment of the dwelling house. Accessed off the existing private drive formed of hogging, (no new access required) with drainage of gutters to soakaway in curtilage. Location of outbuilding indicating siting and dimensions attached.

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 considered to be lawful.

Reasons

2. The appellant wants to build a good sized outbuilding next to his house. Such a building would be permitted development under Class E of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015 except that the Council are concerned that it is not genuinely required for incidental purposes and so falls outside of this class altogether.

3. Class E is for "*buildings etc incidental to the enjoyment of a dwellinghouse*" and it is well attested that to be incidental there has to be a reasonable connection between the activities proposed and the occupation of the dwelling, and that such activities cannot be merely the unrestrained whim of the applicant.

4. In this case the appellant wants to use the building to house 2 cars, gardening equipment, a gym and a DIY workshop. The footprint of the proposed building would be 57sqm. The Council's doubts are fuelled by two facts, firstly the original dwelling only had a footprint of 50sqm so the outbuilding would be bigger than the house, and the appellant has already said he keeps his

gardening equipment in a single detached garage, so there is no need to provide further space for gardening equipment storage.

5. I saw on my site visit that the house is located down a long private drive in the countryside. It has a large, mostly grassed garden around it, and at the bottom of the site, where the access track turns into the site is a small detached garage. There is also a rather dilapidated, small, summerhouse close by, but no other obvious buildings. The garden, and thus curtilage, is substantial, but so is the house. The 'original' dwelling may only have been 50sqm, but now it has been substantially enlarged with a footprint over 3 times that and all across 2 stories, resulting in 320sqm of floor space. The outbuilding will thus be proportional to the dwelling. There is nothing in Class E that suggests any comparison should be made to the 'original' dwelling. This is not a green belt case and permitted development rights are exercisable by anyone as long as they meet the conditions and limitations in the relevant Class.

6. The fact that the appellant's garage is stuffed full of gardening and outdoor equipment (as shown in his photographs) does not make it so unreasonable to provide a larger space for storage that such space would not be incidental. In fact it would seem that more storage is obviously required. In my view therefore there is nothing to suggest any doubt over the incidental use of the outbuilding which is therefore permitted development. There are also no enforcement notices in force that I have been made aware of that relate to the exercise of the relevant permitted development rights. I shall allow the appeal and issue the certificate.

Simon Hand

Inspector

The Planning Inspectorate

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 7 May 2020 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 191 of the Town and Country Planning Act 1990 (as amended), for the following reason: the construction of the proposed outbuilding would be permitted development in accordance with Class E of Part 1 of Schedule 2 of the General Permitted Development (England) Order 2015.

Signed

Simon Hand

Inspector

Date 24 November 2020
Reference: APP/C1950/X/20/3256606

First Schedule

the construction of single storey outbuilding under permitted development with garage, workshop, gym and bicycle & garden maintenance equipment storage, for the purpose of incidental enjoyment of the dwelling house. Accessed off the existing private drive formed of hogging, (no new access required) with drainage of gutters to soakaway in curtilage.

Second Schedule

Land at 102 Harmer Green Lane, Welwyn, Herts, AL6 0ES

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 operations described in the First Schedule which had they taken place on the land specified in the Second Schedule would have been lawful, on the certified date and, thus, would not have been not liable to enforcement action, under section 172 of the 1990 Act, on that date.

This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any 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.

The Planning Inspectorate

Plan

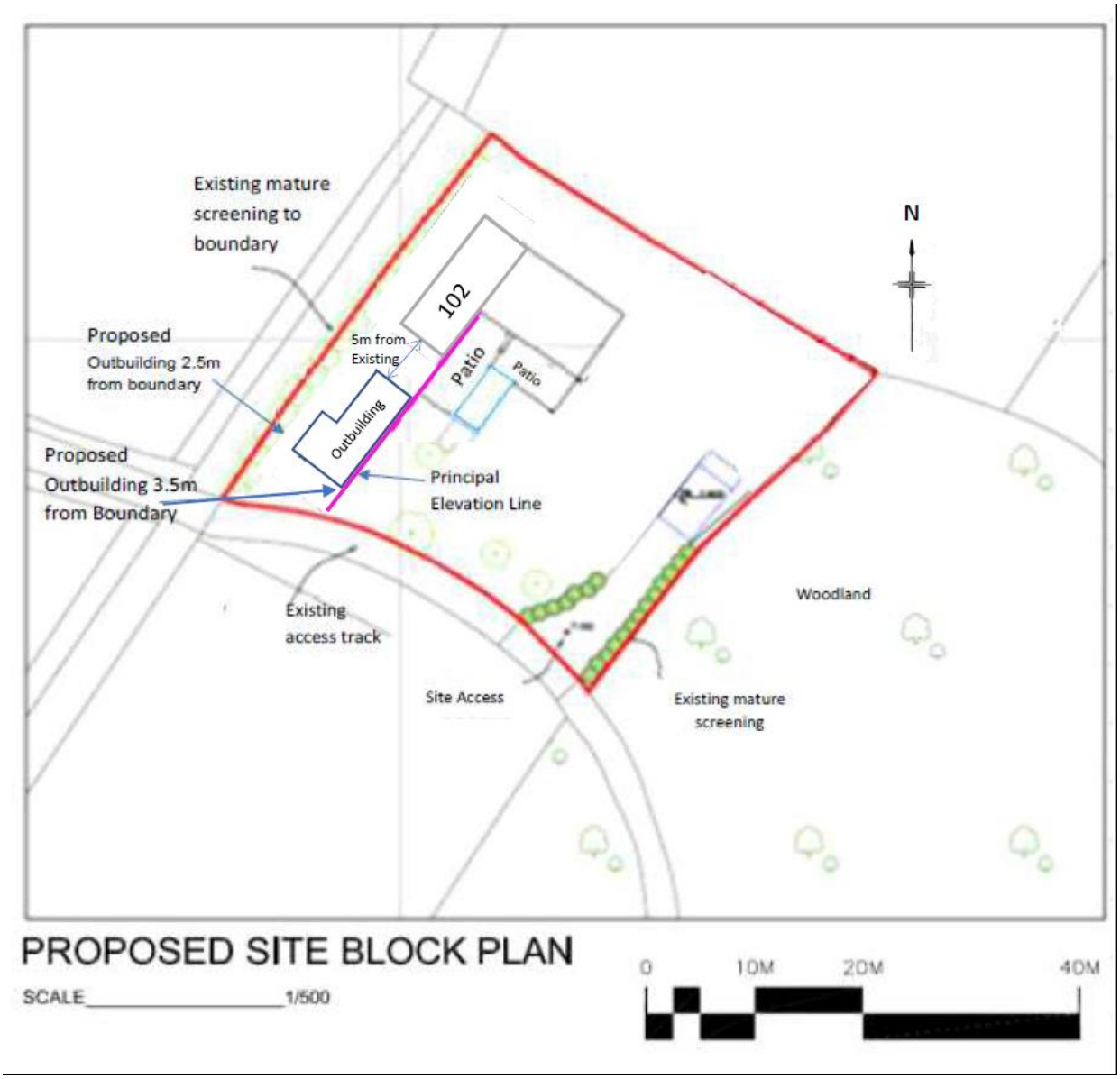
This is the plan referred to in the Lawful Development Certificate dated: 24 November 2020

by Simon Hand MA

Land at: 102 Harmer Green Lane, Welwyn, Herts, AL6 0ES

Reference: APP/C1950/X/20/3256606

Scale: not to scale



The Planning Inspectorate

Appeal Decision

Site visit made on 12 July 2018

by D A Hainsworth LL.B(Hons) FRSA Solicitor

an Inspector appointed by the Secretary of State

Decision date: 30 July 2018

Appeal Ref: APP/T5150/X/17/3188649
68 Brook Road, London NW2 7DP

- The appeal is made by Jason Ben-Zion under section 195 of the Town and Country Planning Act 1990 against a refusal by the Council of the London Borough of Brent to grant a lawful development certificate.
- The application Ref: 17/3915, dated 11 September 2017, was refused by notice dated 6 November 2017.
- The application was made under section 191(1)(b).
- The operations for which the certificate is sought are the erection of a single-storey outbuilding in the rear garden of the house.

Decision

1. The appeal is allowed and attached to this decision is a lawful development certificate relating to the operations described in the application, which are considered to be lawful at the time of the application.

Reasons for the decision

2. Section 195 requires an assessment to be made as to whether the refusal of the application is or is not well-founded. The assessment is based on whether or not the operations carried out were lawful at the time of the application. The planning merits of the operations are not relevant and there is no planning application before me.

3. The Council refused the application because they considered the operations were not be permitted by Class E of Part 1 of Schedule 2 to the Town and Country Planning (General Permitted Development) (England) Order 2015. Class E permits the provision within the curtilage of the house of any building required for a purpose incidental to the enjoyment of the house as such, subject to the limitations set out in E.1.

4. The reason for refusal does not explain why the Council came to this conclusion, but the Council's Delegated Report submitted in connection with the appeal indicates that the Council were not satisfied that the outbuilding was required for a purpose incidental to the enjoyment of the house as such. They reached this conclusion after taking into account its size, its use and the facilities it provides. I conclude from reading the report that the Council consider that the outbuilding complies with Class E in all other respects.

5. 68 Brook Road is an extended semi-detached house with six bedrooms. It occupies a triangular-shaped corner plot. The outbuilding has been erected as far away as possible from the house, in the part where the rear garden comes to a point. It has an area of about 28m² and consists of an open room and a small room containing a shower, a WC and a handwash basin. The submitted floor plan shows that it is used as a playroom/gym; at the time of my visit it contained some gym equipment and two suitcases. The house has no other outbuildings.

6. My understanding of the principles that apply to the phrase "required for a purpose incidental to the enjoyment of the house as such" is as follows: -

   - The concept of Class E is broad and a wide range of incidental purposes is permitted.
   - The incidental purposes must be connected with the running of the house or the domestic, recreational or leisure activities of its occupiers and the building must be required for those purposes, but it is primarily for the occupiers to decide what incidental purposes are to be enjoyed in the building.
   - In order to assess whether the purposes are incidental to the enjoyment of the house, their nature and scale are to be considered. The use of the building should be subordinate to the use of the house as a dwellinghouse.
   - The size of the building in comparison to the size of the house is a relevant, but not a decisive, factor in this assessment. The comparison should be with the whole of the house as it existed at the time of the application, since this is the house in respect of which Class E permits development.
   - The issues are to be decided with an element of objective reasonableness, as a matter of fact and degree in each case.

7. The Delegated Report approaches the term "required" in this phrase as meaning that there is an emphasis on an applicant showing a requirement for the building as part of their application. This approach could oblige an applicant to prove a need for a building based on their personal lifestyle and household circumstances. It could lead, for example, to applications being refused for a garage because the household did not have the use of a car at the time or for a greenhouse because no-one in the household had shown an interest in cultivating plants. The phrase "required for a purpose incidental to the enjoyment of the dwellinghouse as such" should in my view be considered as a whole, applying the principles set out in paragraph 6 above.

8. There is no statutory limitation on the incidental purposes for which an outbuilding may be provided. A wide range is usually taken to be included, as long as the purposes are connected to the running of the house and to the domestic, recreational or leisure activities of its occupiers and do not involve the provision of primary living accommodation, such as a bedroom, bathroom, or kitchen. The purpose put forward by the appellant - a playroom/gym for the household - is in my opinion capable of being a purpose "incidental to the enjoyment of the dwellinghouse as such" for which an outbuilding may be required. I do not consider that the inclusion of the small room containing a shower, a WC and a handwash basin amounts to the provision of primary living

accommodation, because it is reasonably necessary for users of the playroom/gym to have such facilities close at hand, since they would otherwise have to make their way back to the house each time they needed them.

9. I have assessed the application with the necessary element of objective reasonableness. The floorspace provided in the outbuilding is not particularly large for a playroom/gym, the house has six bedrooms, and there are no other outbuildings. It seems to me, as the appellant maintains, to be self-evident that the outbuilding is needed, since the playroom/gym could not reasonably be accommodated in the house, taking into account all the other customary domestic and family needs the house is used for, and bearing in mind that it is primarily for the occupiers of the house to decide how they use their accommodation and what incidental purposes are to be enjoyed in the outbuilding. As a matter of fact and degree, I consider that the outbuilding is required for purposes incidental to the enjoyment of the house and that its use is subordinate to the use of the house as a dwellinghouse.

10. For the reasons set out above, I have concluded that the operations carried out were permitted by Class E. They were therefore lawful at the time of the application for the certificate. I am satisfied that the Council's refusal of the application is not well-founded. The appeal has therefore been allowed and, as required by section 195(2), the appellant has been granted a lawful development certificate under section 191.

D.A.Hainsworth

INSPECTOR

The Planning Inspectorate

Lawful Development Certificate

APPEAL REFERENCE APP/T5150/X/17/3188649
TOWN AND COUNTRY PLANNING ACT 1990: SECTION 191

THE TOWN AND COUNTRY PLANNING (DEVELOPMENT MANAGEMENT PROCEDURE) (ENGLAND) ORDER 2015: ARTICLE 39 & SCHEDULE 8

IT IS CERTIFIED that on 11 September 2017 the operations described in the First Schedule to this certificate in respect of the land specified in the Second Schedule to this certificate and shown edged and hatched 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, for the following reason:

> The operations were permitted by the Town and Country Planning (General Permitted Development) (England) Order 2015, Article 3(1) and Schedule 2, Part 1, Class E.

D.A.Hainsworth

INSPECTOR

Dated: 30 July 2018

First Schedule

The erection of a single-storey outbuilding in the rear garden, as shown on Dwg. No. 201737.P.111 Revision A.

Second Schedule

68 Brook Road, London NW2 7DP

Notes

1. This certificate is issued solely for the purpose of section 191 of the Town and Country Planning Act 1990.
2. It certifies that the operations described in the First Schedule taking place on the land specified in the Second Schedule were lawful on the specified date and, therefore, were not liable to enforcement action under Part VII of the 1990 Act on that date.
3. This certificate applies only to the extent of the operations described in the First Schedule and to the land specified in the Second Schedule and identified on the attached plan. Any operations that are materially different from those described or that relate to any other land may render the owner or occupier liable to enforcement action.

The Planning Inspectorate

Plan attached to Lawful Development Certificate

68 Brook Road, London NW2 7DP

Appeal reference: APP/T5150/X/17/3188649

This is the plan attached to the Lawful Development Certificate
dated: 30 July 2018

D.A.Hainsworth
Inspector